

I could not, at any age, be content to take my place in a corner by the fireside and simply look on.

- ELEANOR ROOSEVELT

The Colorado Long-Term Care Ombudsman

Legal Assistance Developer

ANNUAL REPORT 2011

The Legal Center for People with Disabilities and Older People



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Virginia Fraser, Colorado Long-Term Care Ombudsman 1980 - 2000

This report is dedicated to the memory of Ginny Fraser, who passed away on November 18, 2011.

The Colorado Long-Term Care Ombudsman Program 2011

ACCOMPLISHMENTS

SHELLEY HITT, AS THE STATE LONG-TERM CARE OMBUDSMAN:

- Served as chair of the Colorado Nursing Facility Culture Change Accountability Board.
- Was appointed to the University of Colorado Anschutz Medical Campus Center for Bioethics and Humanities Advisory Board.
- Served on the Steering Committee of the Colorado Coalition for Elder Rights and Abuse Prevention.
- Served on the National Association of State Ombudsmen (NASOP) Board of Directors and two NASOP committees on data collection and analysis.
- Was appointed to the Long-Term Care Advisory Committee and the Nursing Facility Advisory Committee at the Department of Health Care Policy and Financing.
- Served as chair of the national workgroup to improve accuracy and consistency in ombudsman data collection, participating in the development, distribution and implementation of improved data training modules.
- Presented on best practices for data collection and training of local ombudsmen at the National Consumer Voice Conference.
- Responded to calls for information and assistance from consumers, families, residents, local ombudsmen, Area Agencies on Aging staff, and other long-term care professionals.

COLORADO'S LOCAL OMBUDSMEN:

- Made 5,908 visits to assisted living residences and 5,095 visits to nursing homes - more than twice the required number of visits. Colorado requires each nursing home to be visited by an ombudsman at least monthly and each assisted living residence at least quarterly.
- Completed 5,612 consultations with individuals, up 11% over 2010.
- Participated in 334 nursing home and assisted living surveys conducted by the Colorado Department of Public Health and Environment.
- Conducted 4,368 consultations with facility staff.
- Conducted 622 community education sessions on residents' rights, the role of the ombudsman, how to choose a long-term care facility and state and federal regulation of long-term care facilities.
- Led 186 training sessions for volunteer and staff ombudsmen.
- Hosted 169 training sessions for facility staff.
- Attended 1,678 resident council meetings and 112 family council meetings.
- Investigated 4,501 complaints, 76% of which were fully or partially resolved to the satisfaction of the resident.

Top Complaints in Nursing Facilities and Assisted Living Residences in 2011

1. Quality of Care	1,033
2. Autonomy and Choice (Quality of Life)	729
3. Environment	376
4. Systems/Benefits/Other Agencies	338
5. Admission/Discharge/Eviction	292
6. Staffing	285
7. Abuse, Gross Neglect, Exploitation	234

We were disturbed to see that cases of abuse rose by 15% over the previous year. While the overall number of abuse complaints is relatively small, this category includes the most serious mistreatment of residents such as physical, sexual and verbal abuse, gross neglect and financial exploitation. As can be seen in some of the featured stories (see insert), ombudsmen throughout the state take immediate and uncompromising action to halt this type of abuse whenever it occurs.

Additional bad news includes a 57% increase in discrimination in admissions due to the elder's health condition or disability. As poor health or disability is generally the reason seniors seek long-term care, this is especially troubling. Other critical areas of concern that saw an increase in complaints last year include: language barriers in daily routine - up 25%; pressure sores - up 35%; lack of adequate and timely dental services - up 40%; weight loss due to inadequate nutrition - up 55%; and facility administration unresponsive or unavailable - up 44%. There is also an overall 28% increase in complaints about the administration of facilities, including policies, procedures, attitudes and access to resources.

The good news is that overall there was a significant decrease in some of the most persistent problems for residents of long-term care communities. Complaints about quality of care declined by 12.8% from 2010, quality of life concerns dropped by 26.6%, and problems related to the environment (temperature, ventilation, facility cleanliness, etc.) were 9.4% fewer than in the previous year. Both ombudsmen and facility staff were pleased to see that complaints about staffing (shortage of staff, inadequate staff training and staff being unresponsive) declined by 20.1% and that problems with discharge and evictions declined by 16.3%. This latter category is still of major concern to ombudsmen as involuntary discharges are hugely distressing for residents and their families, and are time consuming for the ombudsmen. Residents and families are frequently misinformed about the discharge, or not informed in a timely manner of their right to appeal. Many involuntary discharges result from non-payment due to misuse of the resident's funds by family members or other persons with power of attorney. Persons with Alzheimer's disease or related dementias are also frequent targets for involuntary discharge due to behavior challenges that facilities are not equipped to handle.

Emerging Issues and Trends

The Patient Protection and Affordable Care Act (“ACA”) was enacted in March 2010. Much has been written about the Act and whether it will remain the law of the land. The United States Supreme Court has scheduled a hearing in March 2012 to determine the constitutionality of the individual mandate and the required Medicaid eligibility expansions. In the meantime, there are several components of the ACA already in effect in Colorado that benefit older Coloradans. The ACA made a number of changes to the long-term support and services provided through Medicaid that are already in effect. These include new and expanded options for Home and Community Based Care, with an emphasis on person-centered care planning and consumer-directed models of care. The ACA sought to “rebalance” Medicaid long-term care away from the historical bias for institutional care and toward greater home and community based benefits, thus allowing individuals to age in their own home at significantly lower expense to the state, and allowing the maximum number of persons to be served with the same few dollars. Many of the provisions of the ACA are of vital importance to the health and well-being of older adults. These include closing the Medicare prescription drug “donut-hole,” expanding coverage of preventive services, and developing innovative approaches to serving individuals who are eligible for both Medicare and Medicaid (“Dual Eligibles”).

Another Medicaid program that is new to Colorado is called “Money Follows the Person” (now known in Colorado as “Colorado Choice Transitions”), which aims at transitioning individuals out of institutional care and back into community living. Ombudsmen will play an important role in monitoring the process and effectiveness of resident transitions. Nationally, Medicaid covers approximately 45% of all expenses for long-term care. Last year, Colorado spent 15% of its total expenditures on Medicaid, which included over \$1 billion from the General Fund. It is projected that almost one-third of the state’s General Fund budget will go to cover Medicaid and other health care programs. Currently, the main

roadblock to successfully transitioning residents from nursing homes to home-based care is the Medicaid paperwork. The application process can take months and is frustrating for residents and facility staff, especially in cases where residents do not need full-time nursing. Medicaid decisions at the county level can take up to six to nine months for approval or denial. If not handled appropriately, seniors can be in danger of losing both their home in the community and their place in the nursing home, not to mention becoming liable for significant nursing home bills if they are ultimately determined to be ineligible for Medicaid services. This causes great anxiety for fragile seniors and takes up many hours of the ombudsmen’s time.

A report from the American Medical Directors Association (AMDA) using data from the Center for Medicare and Medicaid Services illustrates a surprising national trend: People ages 31 to 64 have entered nursing homes at a higher rate than those 65 and older in the past eight years. The number of those younger than 65 has increased 22 percent in the last eight years and has climbed to 14.9 percent of the nursing home population. Nursing homes that once catered almost exclusively to the elderly must handle a wider range of ages and illnesses. Emerging evidence shows that many younger residents have debilitating conditions caused by chronic diseases or traumatic injuries. Some have histories of mental illness and substance abuse. The AMDA notes that few studies have been done at the state level and that it is seeking help from states to define the issues, problems, and challenges of managing the younger patient population within the long-term care setting. The Legal Center will explore this issue in the coming year.

Mary Catherine Rabbitt and Shelley Hitt have been involved in these ongoing discussions about how to serve more individuals in the community without raising the overall costs for long-term care in Colorado. They will continue to work on these promising initiatives to benefit older Coloradans.

Continued next page.

While The Legal Center is always concerned about any problems with the quality of care or instances of abuse for Colorado’s older adults, we applaud the continued improvement in conditions in both nursing homes and assisted living residences. The Colorado Long-Term Care Ombudsman program is a part of the Colorado Culture Change Coalition (CCCC) whose mission is to “transform the culture throughout the long-term care continuum by affirming the dignity and value of each individual who lives and works in these settings.” Culture change promotes flexibility and choice for residents in a welcoming, home-like atmosphere. We believe that culture change efforts by facilities, supported by state and local ombudsmen, have improved quality of care and reduced routine complaints.



Emerging Issues and Trends, continued:

Areas of concern that would benefit from legislative, policy, or funding changes:

- Financial abuse of the elderly is approaching a crisis. A recent study by MetLife indicates that 2.9 million people over 60 are victimized by family members, caregivers, financial advisors, lawyers, and others each year in the U.S. In Colorado, ombudsmen and legal assistance providers have witnessed first-hand the rapid increase in cases of financial exploitation resulting from misuse of powers of attorney and guardianships. While ombudsmen and legal assistance providers continue to educate consumers, families and facility staff about the limits of such authority and the responsibilities under the law, seniors urgently need additional protection from exploitation.
- There is minimal regulation, oversight and quality assurance for the provision of Home and Community Based Services (HCBS). As more consumers are encouraged to stay in their own homes or to transition from long-term care back into the community, this will become a major issue, especially as home care consumers have no advocate to act on their behalf, resolve complaints or represent their interests. The Legal Center recommends exploring an expanded role for the Colorado Long-Term Care Ombudsman Program with appropriate authority and adequate funding.

- Assisted living residences (ALRs) are increasingly accepting residents who would formerly have been admitted to nursing homes. ALRs are not subject to the rigorous national and state oversight required for nursing homes and new facilities spring up regularly with inadequately trained staff unprepared to deal with the many residents who should really be receiving a much higher level of care. Instances of abuse, neglect, and poor care are frighteningly blatant in many ALRs. Ombudsmen lack the resources to do more than “put out fires” when what is needed is a systemic overhaul of regulation and oversight to protect the very vulnerable residents in these facilities.
- Mental health services are not adequately funded or are not available to residents of long-term care facilities and staff are not adequately trained to address the mental health needs of residents and their resulting behaviors. In addition, there are insufficient housing options available in the community for individuals with mental health needs.
- There is a serious shortage of Medicaid-funded assisted living beds, and this shortage is especially acute for memory-impaired seniors and those in outlying areas of the state.



These photographs are of a Residents' Rights Awareness Month celebration at Larchwood Inns in October 2011. Local ombudsmen worked closely with the staff of Mesa County nursing homes and assisted living residences to host a fun-filled party that also educated residents about their rights. What happened next was a testament to the importance of helping residents be more connected with their communities. The residents had such a good time, and learned so much, that they took it upon themselves to plan additional activities:

- Assisted living residents who participated in the celebration now visit Larchwood once a month to sing with the nursing home residents. They had an extra special visit on Valentine's Day 2012.
- The Larchwood residents and staff created a program to put together gift packages for residents of the local assisted living facilities who cannot afford personal hygiene products such as soap, shampoo, and lotion. Residents package the items in beautiful baskets and the staff make the deliveries.
- Two nursing homes joined together to enjoy a monthly BINGO game. The two facilities alternate hosting duties.
- Nursing homes and assisted living residents now regularly attend Council on Aging meetings; those able to make the trip attended Senior Day at the Capital on March 14, 2012.





The Colorado Long-Term Care Ombudsman Program and the Legal Assistance Developer Program work together to protect and promote the rights of Colorado's older adults and to improve their quality of life.

Both programs are administered by The Legal Center for People with Disabilities and Older People under a contractual agreement with the Colorado Department of Human Services, Division of Aging and Adult Services. The two programs operate in conjunction with the 16 regional Area Agencies on Aging (AAA) to coordinate services statewide.

WHAT DO THE OMBUDSMEN DO?

Ombudsman (om-budz-man) is a Swedish word meaning "one who speaks on behalf of another." Ombudsmen protect the rights of people living in nursing homes and assisted living residences.

Colorado has 50 full- and part-time paid ombudsmen (the full-time equivalent of 32.03) and 84 certified volunteer ombudsmen who strive to improve the quality of life for more than 36,000 older adults in long-term care. Colorado has 214 nursing facilities with a total of 19,920 beds and 571 assisted living residences with a total of 16,275 beds.

Colorado's certified volunteer ombudsmen logged a total of 8,433 hours at an hourly value of \$21.36 (2010 Bureau of Labor Statistics estimate). This represents a contribution of \$180,128, especially valuable in light of the state's economic difficulties.

Ombudsmen:

Help resolve complaints about the facility or individual staff members, such as

- physical or verbal abuse
- poor quality of care

Help protect residents' rights under the law—including the right to

- privacy in care and treatment
- voice grievances without retaliation

Help older adults

- understand their options for long-term care
- choose the long-term care facility or community living arrangement that is right for them

WHAT DO THE LEGAL ASSISTANCE PROVIDERS DO?

Each of Colorado's 16 Area Agencies on Aging has a legal assistance provider who coordinates free legal services for older persons. Colorado has a total of 20 paid attorneys and over 100 pro bono attorneys who in 2011 provided legal assistance to 3,699 older persons.

Legal assistance providers help older adults with a variety of legal issues:

- efforts to save their home from foreclosure and from consumer scams
- responding to creditor-initiated bank garnishments for unpaid medical bills and asserting the elder's rights to exemptions
- financial exploitation, including misuse of a power of attorney by a relative or caregiver
- denials, reductions and terminations of Medicaid and other public benefits
- preparation of deeds, wills and advance directives
- guardianships and conservatorships

"The human heart, at whatever age, opens only to the heart that opens in return."

- Maria Edgeworth

The Legal Assistance Developer Program 2011

ACCOMPLISHMENTS

Mary Catherine Rabbitt, as the Colorado Legal Assistance Developer:

- Served on the “Dual Eligibles” Stakeholders’ Group to assist the Colorado Department of Health Care Policy & Financing in developing a proposal to better serve those Coloradans receiving both Medicare and Medicaid.
- Served on the Planning Committee for “Senior Day at the Capitol” for 2011 and 2012.
- Served on the faculty and on the Planning Committee for the first Senior Law Day for Jefferson County.
- Served on the Planning Committee for a Statewide Aging & Disability Services Conference to be held in 2012.
- Was inducted into the National Elder Rights Advocacy “Hall of Fame.”
- Was re-elected to the Board of Directors of Colorado Senior Lobby.
- Continued to serve as a member of the Coordinated Community Response to Elder Abuse Committee in Denver County.
- Continued to serve on the Leadership Committee of the “Plan for Aging Well” for Jefferson County and its Basic Needs Work Group.
- Served as a member of the Colorado Bar Association Elder Law Section.
- Was appointed to the Regional Council of the National Association of Legal Services Developers.
- Testified at the Medical Services Board meeting in December 2011 regarding proposed changes to the Long-Term Care Eligibility regulations.
- Provided technical assistance to the development of a proposed Mandatory Reporting of Elder Abuse bill to be introduced in 2012.
- Responded to 1,125 calls for technical assistance: 415 calls from local legal service providers, AAA directors and local ombudsmen; 602 calls from other professionals and 108 calls from older consumers.
- Conducted on-site evaluations of four local legal assistance programs and reviewed self-evaluations from the other 12 local programs.

- Conducted seven trainings to over 325 individuals across the state on Medicare and Medicaid, Advance Directives and Elder Abuse.

Across Colorado, the Legal Assistance Developer Program served 3,699 older adults as follows:

REGION	NUMBER OF OLDER ADULTS SERVED
1	98
2A	318
2B	181
3A	1,486
3B	133
4	486
5	95
6	90

REGION	NUMBER OF OLDER ADULTS SERVED
7	112
8	35
9	102
10	289
11	70
12	130
13	70
14	4

Unfortunately, in 2011 there were a total of 718 older adults who requested legal assistance, but could not be served because of inadequate resources.



“Age should not have its face lifted, but it should rather teach the world to admire wrinkles as the etchings of experience and the firm line of character.” - Clarence Day

Remembering Ginny Fraser, Colorado Long-Term Care Ombudsman 1980-2000

Virginia Fraser was Colorado's Long-Term Care Ombudsman at a time of great change in the long-term care system, and she drove much of that change! Ginny was tireless in her campaign for improving the conditions for residents in nursing homes, and she continued to advocate for quality of care and quality of life for older adults long after she retired. Interviewed by The Legal Center in 2005 for the 30-year celebration of the program, here is how she described her role:

When I became the Colorado Long-Term Care Ombudsman in 1980, there was a very limited role assigned to our office and minimal funding, and yet we had so much to do! At that time about 40 percent of residents were in restraints 'for their own safety.' Instead of providing a safe space for people with Alzheimer's so they couldn't wander off, they were simply strapped into their wheelchairs. There was no network of ombudsmen as we have now; in the beginning there was just me to worry about all these residents.

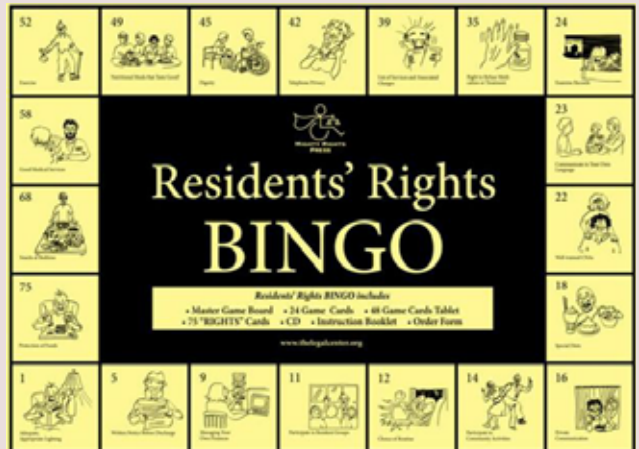
Despite the difficulties, Colorado was way ahead of the game. We were the first state to license assisted living facilities; we developed some innovative programs to promote best practices; we focused on bringing together all the different state agencies to work as a team; and we established a consumer group at the Colorado Department of Health to look at regulations and quality of care issues. There were no national materials available to us to train staff or to provide to consumers—we had to create our own. I'm proud to say that Colorado's efforts were recognized in a report by the U.S. General Accounting Office.

Being Colorado's Long-Term Care Ombudsman was a wonderful job because I got to work with individuals in nursing homes and at the same time I was working to change the systems on a state-wide and national level. I could really see the difference we were making in people's lives.

Ginny passed away on November 18, 2011. Her friends and colleagues throughout Colorado's system of care for older adults honor her legacy and strive every day to build on the foundation she laid.

Residents' Rights BINGO!

The Residents' Rights Bingo game was designed in 1990 by Virginia Fraser, State Long-Term Care Ombudsman, as a new way to engage older people and their families in learning about their rights. The game was an immediate success with both residents and staff of long-term care facilities. Its unique approach took a potentially confrontational issue and made it both fun and effective. The Legal Center is proud to introduce an updated version of this popular game for residents, staff and families. Development of this new version was funded by the Colorado Nursing Facility Culture Change Accountability Board and reflects significant advances over the past 20 years to create a more compassionate version of long-term care. Residents' Rights Bingo is published by Mighty Rights Press and is available from The Legal Center. To order call 303-722-0300 or visit our website: www.thelegal-center.org.



To a local ombudsman from a family member.

I just wanted to thank you again for all the effort you gave to improving my Mom's stay in the nursing home. Without all the work you did on her behalf, I'm certain we would not have had this last year to enjoy her. Thank you so very much from the bottom of my heart. You have been an angel and my sister and I sincerely appreciate everything you did."

Statewide Contact Information

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