

**The Legal
Center's Older
Americans
Programs:**

**The Colorado
Long-Term Care
Ombudsman**

**Legal Assistance
Developer**

2012 ANNUAL REPORT

The Legal Center for People
with Disabilities  and Older People

Colorado's Protection & Advocacy System

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*CELEBRATING
25 YEARS!*



*Grow old with me!
The best is yet to be.*

- ROBERT BROWNING



Congratulations to The Legal Center on 25 years as the home of Colorado's Older Americans advocacy programs

In 2013, The Legal Center is celebrating 25 highly successful and nationally recognized years as the home of Colorado's Long-Term Care Ombudsman Program, and the closely aligned Legal Assistance Developer Program. While the Ombudsman Program has come a long way since its origin as a pilot under Colorado Legal Services in the mid-1970s - even predating the 1978 amendment to the Older Americans Act (OAA) that authorized the Ombudsman Program nationwide - its effectiveness has always been rooted in its clear and singular focus on the quality of care and quality of life for residents of Colorado's long-term care facilities.

Following the addition of the 1978 OAA Ombudsman amendment, the program was briefly housed with the State Unit on Aging in the Colorado Department of Social Services - a location where the program resides in many states today. But in Colorado concern was expressed by advocates and by a legislative interim committee that the Ombudsman Program should not be located in the same state agency that administered Medicaid. This concern resulted in legislative direction that the State Unit on Aging should contract the program to a private nonprofit agency outside of state government. It was first awarded to the Colorado Congress of Senior Organizations (CCSO), a statewide advocacy organization. When CCSO lost its funding support in the early 1980s, the program was housed at the Medical Care and Research Foundation for about five years. In 1988 the contract was awarded to The Legal Center for People with Disabilities. Virtually immediately, and reaffirmed over the past 25 years, the program had found its ideal "home."

There are many reasons, and many people, deserving credit for the well-earned statewide and national recognition that Colorado's programs have received. Among them are:

- **The Quality of Colorado's Ombudsmen:** Colorado has had the good fortune of having outstanding individuals serving as State Ombudsmen. Virginia Fraser was first selected as the State Ombudsman in 1978, and served in that role until 2000. Janet Meyers job-shared with Virginia during the last two years of her tenure. Patricia Tunnell was the State Ombudsman from 2000-2008, and Shelley Hitt was selected as State Ombudsman in 2008. Each one has possessed a combination of professional competence, personal commitment, sincere compassion, and a clear and consistent dedication to the program's mission that has earned them the highest respect from those with whom they have worked - the provider community, state agency funders and regulators, advocates, federal agencies, ombudsmen in other states, and, most importantly, from the residents and family members.
- **Alliance with Legal Assistance Developer:** The partnership between Colorado's Long-Term Care Ombudsman and the Legal Assistance Developer is unprecedented compared to other states. The Ombudsman and Legal Assistance Developer work as a team, and the Legal Assistance Developer has consistently provided outstanding legal support to the Ombudsman Program and brings exceptional expertise to issues of long-term care, in addition to overseeing a statewide network which provides free legal services to older individuals. This program has been served by exceptional individuals as well. When the programs went to The Legal Center in 1988, Ina Katich was the Legal Assistance Developer. When she left in 1989, Janet Meyers was hired, and then followed by Valerie Corzine in 2002. Mary Catherine Rabbitt became the Legal Assistance Developer in 2008. These individuals contributed extensively to the success of both programs, and the Legal Assistance Developer's role has become even more critical as long-term care issues have become more complex, and the body of Medicaid and Medicare law has expanded along with the practice of elder law.
- **The Philosophy:** One of the genius aspects of the Long-Term Care Ombudsman Program is in what the program "is not." While it needs to work very closely with, and have a detailed knowledge of state and federal laws and requirements for long-term care services, it "is not" a governmental regulator that can sanction or close down a facility. While it needs to understand the fiscal policies, incentives, penalties and sources of funding for the system of long-term care, it "is not" part of the agency that controls the purse strings for providers. Its sole mission and focus is on the needs and rights of residents of long-term care facilities. Although the program "is not" a regulator or funder, that does not mean the program lacks effectiveness in leading efforts for positive change. Instead, because of its singular resident-focused mission, the program has been able to make a tremendous difference in the very real situations of individual lives, and in state policy that affects the lives of thousands of people.



- **Its Independence:** While the program is closely linked with state agencies such as the Department of Public Health and Environment and the Department of Health Care Policy and Financing, and with for-profit and nonprofit care providers, the Ombudsman Program is independent of those agencies and organizations. Colorado's Ombudsman is not bound by any other loyalty than to the residents of long-term care facilities. This independence has enabled the program to do what is "right" rather than what is "expedient" or "politically appropriate."

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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 contract 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 the full-time equivalent of **34.5** paid ombudsmen employed statewide. Together with the **41** certified volunteer ombudsmen, they strive to improve the quality of life for more than **36,000** older adults in long-term care.

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 civil legal services for older persons under the Older Americans Act. Colorado has a total of **20** paid attorneys and over **100** pro bono attorneys who in 2012 provided legal assistance to **4,427** 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

*"It's important to have a wrinkle in your
wrinkle." - Author Unknown*

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- **Linkage to and Support from the Aging Network:** Close and supportive linkage to the state and local "Aging Network" also has been critical to its success. The Area Agencies on Aging (AAA) have been instrumental in recruiting and supporting a skilled network of local ombudsmen, who work in cooperation with the network of local legal providers, also supported by the AAAs.
- **The Legal Center:** Finally, The Legal Center for People with Disabilities and Older People has provided an ideal home for the Older Americans programs for the past quarter century. The "protection and advocacy" designation of The Legal Center meshes ideally with the mission of the Ombudsman and the Legal Assistance Developer programs. The Board and staff of The Legal Center have been strong advocates and allies and have been successful in generating outside financial support. There is a symbiotic relationship between the needs and talents of the staff of the Ombudsman/Legal Assistance programs and the expertise of The Legal Center's staff in its other program areas.

Congratulations and thanks to all those who have made these two programs such a success, and best wishes for another quarter century of leadership and service.

- Bill Hanna

Bill Hanna's connection to the Ombudsman and Legal Assistance Developer programs began in the late 1970s when he was the executive director of the Colorado Congress of Senior Organizations, where the program was located when Virginia Fraser was selected as the State Ombudsman. Following nearly 25 years with the Department of Human Services, including roles as State Unit on Aging director and legislative liaison, Bill currently serves as a policy and legislative consultant, and continues his interest in issues related to aging and long-term services and supports.

The Legal Center for People with Disabilities and Older People



Colorado's Protection & Advocacy System

The Legal Center is a nonprofit organization protecting the human, civil and legal rights of people with disabilities and older people. As Colorado's Protection and Advocacy System, The Legal Center has authority under federal law to gain access to facilities and records in order to investigate allegations of abuse and neglect. The organization also helps people obtain state and federally funded services, such as special education, mental health services, developmental disabilities services, and vocational rehabilitation. The Legal Center specializes in civil rights and discrimination issues.

The Legal Center promotes systemic change to sustain or improve the quality of life for children and adults with disabilities and older adults. The Legal Center provides direct legal representation, education, advocacy, and legislative analysis to promote the independence, self-determination, empowerment and community participation of its clients. Similar organizations exist in every state and territory as part of a national protection and advocacy network.

The Legal Center has played a pivotal role in advancing disability law in Colorado and nationally. We are proud of our success in breaking new legal ground. However, we usually resolve our clients' objectives without litigation. Some of our most satisfying legal advances have come through empowering people to advocate for themselves.

The Legal Center operates eight federally mandated programs for people with disabilities. In addition, since 1988, The Legal Center has administered The Colorado Long-Term Care Ombudsman and Legal Assistance Developer programs under contract with the Colorado Department of Human Services. These programs meet federal requirements of the Older Americans Act.

The Colorado Long-Term Care Ombudsman, Shelley Hitt, and the Legal Assistance Developer, Mary Catherine Rabbitt:

- Provide leadership, support, training and technical assistance to the local ombudsmen and legal providers throughout the state on the front lines of service
- Evaluate their respective programs at the 16 Area Agencies on Aging
- Stay abreast of current legislation and new regulations
- Research and analyze critical issues and monitor changing trends
- Work together on public policy initiatives to expand resources on elder law issues and improve long-term care
- Direct public education programming on resources for older adults and their families
- Provide training and support to volunteers and professionals in local organizations
- Serve as the voice of older people to policymakers, regulators and government officials
- Advocate for improvements in legislation, policies, and funding affecting long-term care and elder rights
- Represent Colorado's long-term care and elder legal service needs at the national level

AROUND COLORADO

STORIES FROM LOCAL OMBUDSMEN AND LEGAL PROVIDERS*

In addition to protecting against abuse and exploitation, one of the most difficult tasks faced by ombudsmen and legal providers is helping families navigate federal, state and local bureaucracies. These stories demonstrate the kindness, tenacity, and legal expertise that supports and protects vulnerable older Americans.

PROTECTING A KIND HEARTED RESIDENT FROM FINANCIAL EXPLOITATION

A certified nursing assistant (CNA) took financial advantage of a female resident by playing on her emotions. Every few days, the CNA had a different story - she was struggling to buy books for school, she had just wrecked her car, or she couldn't pay her bills. The resident wanted to help because the CNA was always so nice to her and helped her when her cat needed to go to the vet. When another staff member learned from the anxious resident what was happening, she went to the administrator and the sheriff was called. The CNA had cashed \$1,500 of the resident's checks, money she could not afford to give away. At first the resident didn't want to press charges, but the local ombudsman helped her to understand that what the CNA had done was against the law and could affect other residents as well. The ombudsman comforted the resident, and encouraged her to take action rather than simply being a victim. With the combined efforts of the ombudsman, the facility, a very compassionate sheriff, and an empowered resident, the CNA was charged with a felony and must pay restitution.

LOCAL LEGAL PROVIDER RECOVERS AN ELDERLY WOMAN'S HOME

An 83-year-old woman came to Legal Services for help because she was at risk of losing her home. Several years before, while she was ill, she had given her son power of attorney. He convinced her to add his name to the deed to the house, which she owned free of encumbrances. He later convinced her to sign a promissory note and deed of trust to a loan company to purchase a truck and then convinced her to sign the house entirely over to him. He in turn signed it over to his girlfriend, who served an eviction notice on the client. A lawsuit was filed against the son, his girlfriend and the loan company. The loan company settled on very favorable terms, default judgment was entered against the son and his girlfriend, and the property was returned to the client.

SAVING A RESIDENT'S PROPERTY AND SAVINGS FROM MISUSE BY HER SON

A case was referred to the local Legal Services office by the local ombudsman concerning a revocation of power of attorney that the resident had given to her son. The lawyer and his paralegal met with the client at the assisted living facility and prepared the revocation of POA. While investigating the situation, the lawyer discovered that the son had taken \$100,000 from her bank account and was in the process of selling her home. The lawyer filed suit and was able to get the money returned and stopped the sale of the home.

CHALLENGING THE DISCHARGE OF A HOSPICE PATIENT

A sister anxious about her 55-year-old old brother, called the local ombudsman's office. The man was in a nursing facility receiving hospice care for liver failure. The family had been attempting to get him on Medicaid and they needed bank statements going back for five years. With no power of attorney, the bank refused to provide the information. One morning, the sister received a certified letter saying her brother was being discharged from the nursing home for non-payment. The discharge address listed their mother's home. This was not his home, and the family had no way to cope with his alcoholism and hospice needs. The ombudsman worked with the sister to help her elicit the financial information from the bank, challenge the discharge with the nursing home, and inform Medicaid of their problem with the bank.

*These reports have been edited for space and to protect the identity of individuals and facilities.

The Colorado Long-Term Care Ombudsman Program in 2012

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

- Responded to **1,793** calls for information and assistance from consumers, families, local ombudsmen, Area Agency on Aging staff, and other long-term care professionals.
- Conducted five on-site evaluations of local ombudsman programs, and provided regular technical assistance and training to the state's **45** full and part-time ombudsmen.
- Produced the annual training conference on the complex issues faced by today's ombudsmen: advocating for residents with major mental illness or traumatic brain injury, protecting and promoting the voting rights of residents in long-term care, and addressing the issues that arise when offenders are discharged to or reside in a long term care facility. The conference was attended by **85** people; All ombudsmen who attended received **15** hours of recertification training.
- Elected to serve as co-chair of the Long-Term Care Advisory Committee (LTCAC), which advises the Department of Health Care Policy and Financing on ways to improve the provision and coordination of patient-directed care. The LTCAC identified four strategic initiatives and created four implementation subcommittees: Care Coordination, Consumer Direction, Entry Point and Eligibility and Waiver Simplification.
- Appointed by the Governor to represent residents of long-term care on the Community Living Advisory Group, which will consider and recommend changes to the Long-Term Services and Supports (LTSS) delivery system. The advisory group will work closely with the Long-Term Care Advisory Committee, the Colorado Commission on Aging, and other planning groups to carry out this work and build on previous discussions and recommendations.

COLORADO'S LOCAL OMBUDSMEN:

investigated **3,959** complaints, of which **73%** were resolved to the satisfaction of the resident. The Legal Center believes early intervention by ombudsmen allows facilities to address issues before they become complaints, and certainly before they turn into crises. This makes it easier and less stressful for residents to raise concerns and ensures that problems are resolved promptly. It also lowers use of tax payer money for health department investigations.

Top Complaints in Nursing Facilities and Assisted Living Residences in 2012

1. Quality of Care	907
2. Admission/Discharge/Eviction	335
3. Environment	297
4. Systems/Benefits/Other Agencies	279
5. Staffing	278

Colorado has **222** nursing facilities with a total of **20,210** beds and **586** assisted living residences with a total of **16,275** beds.

- Nursing facilities must be visited by an ombudsman at least once a month and assisted living residences at least quarterly. In 2012, ombudsmen made twice the required number of visits: **2,832** to nursing facilities and **4,383** to assisted living residences. This builds trust with residents and empowers them to address problems and concerns independently, or with the support of ombudsmen.
- Ombudsmen conducted **3,914** consultations with facilities, and **5,177** with individuals. In addition to helping residents and their family members, ombudsmen consult with older adults and their families about choosing a long-term care facility that suits their needs and wishes.
- In addition, ombudsmen attended **1,562** resident council meetings and **109** family councils, and provided **793** community education sessions.

Twenty-five years ago people thought that entering a long-term care facility meant leaving their rights at the door. There was not much awareness of residents' rights and people who lived in these care communities were not even referred to as "residents," but rather as "patients." They wore hospital gowns and were issued slippers. They were permitted very few personal items in their rooms. Slowly, this has changed for the better. The "Four Cs" of collaboration, cooperation, continuing education about residents' rights, and culture change are contributing to improved quality of life for residents in long-term care facilities. Through my work as an ombudsman, I have been able to support these positive changes, such as helping residents exercise their rights to make choices about care, daily activities and how they want to live out the balance of their lives. It is very powerful. All I have to do is go and visit a resident and see that wonderful smile or hear that "hello" and it makes even the worst day feel like a blessing. I feel so privileged and proud to be an ombudsman in service to our older adults.

– Marilyn Richardson, Ombudsman

The Legal Assistance Developer Program in 2012

MARY CATHERINE RABBITT, AS THE COLORADO LEGAL ASSISTANCE DEVELOPER:

- Responded to **1,411** requests for technical assistance
 - o **463** from local legal providers, ombudsmen & AAA directors
 - o **811** from other professionals, such as attorneys and social workers
 - o **146** from seniors and family members
- Conducted **18.25** hours of training for a total of **337** participants on: Medicaid, Medicare, Long-Term Care, Elder Abuse, HIPAA and Confidentiality, Nursing Homes and Alternatives to Institutional Care, and Scope of Authority of Agents and Guardians.

Across Colorado, the Legal Assistance Developer Program served **4,427** older adults as follows:

REGION	CLIENTS SERVED	HOURS OF SERVICE	NUMBER OF CLIENTS NOT ABLE TO SERVE
1	36	43	0
2A	313	204	0
2B	123	699	6
3A	1,435	5,022	443
3B	107	490	53
4	331	1,535	78
5	79	47	0
6	92	230	0
7	81	1,846	78
8	13	32	0
9	121	32	0
10	317	524	19
11	1,119	1,320	80
12	177	60	2
13	79	234	0
14	4	20	0
TOTAL	4,427	12,338	759

The table demonstrates that while some cases can be handled quickly, others may take several hours. In some of the busiest regions, legal providers simply cannot meet the need. The following examples are cases that Mary Catherine Rabbitt personally handled because of the urgency of the issues and the unavailability of local legal assistance:

- An older gentleman contacted our office in September 2012 regarding a Notice of Denial of Medicaid for his 90-year-old mother who is in a nursing home. The reason was “failure to provide information regarding the gross amount of her monthly Civil Service Annuity payment.” The son had financial power of attorney, but the Civil Service Office of Personnel Management (“CSA”) refused to honor it and provide the needed information. In the meantime, the son received a check payable to his mother from her deceased brother’s estate. The bank would not accept the check for deposit (in spite of his POA) and demanded the mother’s signature (which she was unable to provide because of her advanced dementia). At that point, the county proposed to terminate her Medicaid because of the receipt of this check. Mary Catherine went to work on several fronts: contacting the civil service, organizing a local legal provider to assist the elderly son and his mother, and successfully arguing that the bequest was not an “available” resource to her because of her incapacity. While his mother is now secure in her nursing home, the son went through a great deal of anxiety, fearing that he would be unable to provide for her needs.
- Mary Catherine was contacted by an elder law attorney in another state to assist a woman who had financial power of attorney for her brother who was in a Colorado nursing home. The woman was told that she must first pay the nursing home before sending an allowance to her brother’s wife and two minor children. This information was incorrect and directly contradicted federal and state law, so Mary Catherine contacted a representative from the state’s Medicaid agency and he informed the local county that they were in error in their calculations. He ordered them to return funds to the wife and children of the nursing home resident and to pay the nursing home the correct amount owed by the state.

“Beautiful young people are accidents of nature, but beautiful old people are works of art.”

- Eleanor Roosevelt

Residents' Rights Month

Residents' Rights Month is an annual event organized each October by the National Consumer Voice for Quality Long-Term Care to promote awareness of dignity and respect for people in long-term care. The event was celebrated in several care communities throughout Colorado with the theme "My Voice, My Vote, My Right!"

"We want to recognize that being a resident in a nursing home doesn't have to mean that you can't participate in the political process. We hope to facilitate ways for residents to use their voice and their vote and take part in the election this fall," said Sarah Wells, executive director of the Consumer Voice.

Mesa County ombudsman, Marilyn Richardson, brought together 126 residents from seven nursing facilities and five assisted living residences. Colorful banners emphasized the voting theme, and even the cupcakes sported patriotic red, white and blue frosting.

In Montezuma County, the League of Women voters facilitated a debate among local candidates hosted at Vista Mesa Assisted Living. Ombudsman Russ Patten noted that beyond the importance of involving residents in the local political process, it was extremely rewarding to see candidates coming to spend time with residents in their own long-term care setting.



Program Priorities and Legislative Recommendations for 2013

The Colorado Long-Term Care Ombudsman

I have two key priorities for 2013:

- 1) To educate and assist as many nursing home and assisted living residents as possible about the opportunities to live in less restrictive settings through the Community Choice Transitions, Colorado's Money Follows the Person Program.
- 2) Continue to advocate for improvement in the quality of life and standard of care for the thousands of residents that remain in nursing facilities and assisted living residences. These efforts include increased education and intervention in cases of financial exploitation and physical and emotional abuse and neglect, a variety of initiatives to improve the quality and training of staff in assisted living residences, and partnering with other stakeholders to improve the provision of mental health services in both nursing homes and assisted living residences. As a member of the Colorado Coalition to Improve Dementia Care, I am committed to the initiative to reduce the use of antipsychotic drugs for patients with dementia through education and training for staff.



- Shelley Hitt

In the past 25 years the role of the ombudsman has changed dramatically. Twenty-five years ago they handled complaints about cold food and lost clothing - today it's mental health, drug abuse, financial exploitation, and complex diagnoses such as debilitating head injuries. At the same time, nursing homes are coping with very difficult issues such as patients returned from much shorter hospital stays and a lack of mental health care services. Nursing staff are often overwhelmed with the level of care that is needed and the complexity of residents' problems. Ombudsmen are called on to help solve these complex issues. Ombudsman work has become very challenging, but it's also very rewarding to know you have touched someone's life in a most positive way.

- Marlene Miller, Ombudsman

The Colorado Legal Services Developer

- I will continue to monitor the progress of SB13-111, "Concerning Abuse of At-Risk Adults" in the 2013 General Assembly. This Bill follows the recommendations of the SB12-078 Elder Abuse Task Force which met during the summer and fall and of which I was a member. I will also follow any other legislation that affects seniors.
- I am speaking at the 2013 Senior Day at the Capitol on "Medicare, Medicaid and the Implementation of the Affordable Care Act." This timely topic will also be shared with other community groups statewide.
- I am currently planning a two-day training conference for all of the local legal assistance providers in the 16 Area Agencies on Aging across the state, and I am once again involved in planning the Third Annual Senior Law Day in Jefferson County, which is scheduled for June 1, 2013.
- I will continue my involvement as a member of the Stakeholders' group to monitor the implementation of the Colorado "Dual Eligibles" Model Program, if Colorado's grant proposal is approved by the Centers for Medicaid and Medicare Systems (CMS), as part of the Affordable Care Act's Innovation Program to better coordinate primary, acute, behavioral and long-term support and services for persons enrolled in both Medicare and Medicaid.



- Mary Catherine Rabbitt

Statewide Contact Information

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