

**Disability Law
Colorado's Older
Americans
Programs:**

**The Colorado
Long-Term Care
Ombudsman
Program**



**Legal Assistance
Developer
Program**

**2014 ANNUAL
REPORT**



**DISABILITY LAW
COLORADO™**

Protecting the rights of Coloradans of all ages since 1976

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Lead Ombudsman Scott Bartlett for Region 4, Colorado Springs Resident Council presidents and facility staff at the Candidates Forum in support of voting rights for all.



Colorado Long-Term Care Ombudsman Anne Meier with Elma Holder, founder of the National Consumer Voice for Quality Long-Term Care, formerly NCCNHR (National Citizens' Coalition for Nursing Home Reform) at the 2014 conference. The Consumer Voice, founded in 1975, is the outgrowth of work first achieved by advocates working for Ralph Nader and the National Gray Panthers, of which Elma Holder was a member.

On February 1, 2015 The Legal Center for People with Disabilities and Older People officially became Disability Law Colorado.

About Disability Law Colorado

Disability Law Colorado protects and promotes the rights of people with disabilities and older people in Colorado through direct legal representation, advocacy, education and legislative analysis. We specialize in civil rights and discrimination issues, and are committed to increasing opportunities for adults and children with disabilities to live, work and attend school in the community, enjoying independent and productive lives. We also protect the right of people in institutions to be treated with dignity and respect.

As Colorado's Protection and Advocacy System (P&A), Disability Law Colorado has authority under federal law to gain access to facilities and records in order to investigate allegations of abuse and neglect. Similar P&A organizations exist in every state and territory as part of the National Disability Rights Network.

Disability Law Colorado promotes systemic change to sustain or improve the quality of life for children and adults with disabilities and elders. We have played a pivotal role in advancing disability law in Colorado and nationally, and 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 Colorado Long-Term Care Ombudsman and Legal Assistance Developer programs have been administered by Disability Law Colorado since 1988 along with other disability advocacy programs.

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Nick and his dog have a new home in the community



Nick celebrates his new-found freedom with Ombudsmen Vinni Ferrara and Shawn Johnson at Disability Law Colorado's open house. Nick is one of the first Colorado Choice Transitions (CCT) participants to move into a home in the community.

There is a wonderful update to our story in last year's annual report about the young resident who had been in a nursing home with his beloved service dog for over a year. Nick, who is blind, hated being in a nursing home and had a strong desire to return to community life. He enrolled in the Colorado Choice Transitions (CCT) program to assist him in moving from the nursing home back into the community. With assistance from the ombudsman and the CCT program, he was successfully transitioned to his own apartment on October 31st where he happily resides with his service dog today. Even though he had some health challenges before and after the move, he is grateful to be living independently again.

Alive Inside is a joyous cinematic exploration of music's capacity to reawaken our souls and uncover the deepest parts of our humanity. Filmmaker Michael Rossato-Bennett chronicles the astonishing experiences of individuals around the country who have been revitalized through the simple experience of listening to music. His camera reveals the uniquely human connection we find in music and how its healing power can triumph where prescription medication falls short.

Inspired by this amazing film of

one social worker's efforts to bring the healing power of connecting with music to elders across America, the Colorado Department of Public Health and Environment is spearheading a workgroup to find ways to replicate this throughout our state's long-term care facilities. There is widespread support for this idea, from advocates and residents to providers, regulators and policy makers. Music carries hope for people living with dementia, and there are several Colorado facilities that have already committed to incorporating MUSIC & MEMORYSM programs.



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 **Disability Law Colorado** 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 76 certified ombudsmen across the state. To attain certification they must complete an orientation within their local region designed to help build familiarity with the facilities residents and staff, the regulations and the regulatory system. About half of the ombudsmen are volunteers, who give their time generously to serve as resident advocates. These volunteers gave 2,642 hours which is an important aspect of the long-term care ombudsman program.

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

In Colorado, long-term care ombudsmen are advocates for residents of nursing homes, assisted living residences, and similar licensed adult long-term care facilities. They work to resolve individual resident issues and to bring about changes at the local, state, and national level to improve long-term care. While most residents receive good care in long-term care facilities, far too many are neglected and others are victims of psychological, physical, and other kinds of abuse. Trained ombudsmen, paid and volunteer, regularly visit long-term care facilities, monitor conditions and care, and provide a voice for those unable to speak for themselves.

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 (defined as adults 60 and older) under the Older Americans Act. Colorado has a total of **21** paid attorneys and numerous pro bono attorneys who in 2014 provided legal assistance to **4,355** 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

"Life is no 'brief candle' to me. It is sort of a splendid torch which I have a hold of for the moment, and I want to make it burn as brightly as possible before handing it over to future generations." – George Bernard Shaw

The overarching goals of the Older Americans Act (OAA) are the protection and enhancement of the autonomy, dignity, financial security, health, and rights of older Americans. Legal assistance is a critical service in meeting these goals. Legal issues facing older persons in Colorado often have more serious outcomes than those same legal issues facing any other segment of the population. Vulnerable older persons are less likely to seek the assistance of an attorney, either because he/she cannot afford one or do not realize that he/she has a legal need.

The Colorado Long-Term Care Ombudsman Program in 2014

As State Long-Term Care Ombudsman, Anne Meier supports the statewide program through direct consultation to residents, family members, facility staff and policy makers. In 2014, she

- Conducted nine on-site evaluations of local ombudsman programs and informally met with three more. The purpose of these visits is two-fold: first, to seek strengths and areas of improvement for each program, and to support implementation of best practices across the state; second, to provide material support, problem-solving, strategizing and information pertinent to each local program, based on its unique needs and attributes.
- Spoke before nine groups, including Senior Law Days, reaching approximately 1,900 people. The presentations were on such topics as mandatory reporting of elder abuse, ombudsman access and confidentiality provisions, and resident rights - especially the right to receive care consistent with individual need and desire.
- Testified at the Colorado General Assembly on behalf of SB14-109 to increase the personal needs allowance for residents of nursing facilities. This bill was passed and is currently being implemented.
- Served as a member of the Governor's Community Living Advisory Group (CLAG) where she saw completion of the report with recommended changes to the Long-Term Supports and Services (LTSS) program. This document is designed "to ensure that Coloradans who need LTSS get the right services at the right time in the right amount for the right length of time in a place of their choosing. We have also been guided by a deep commitment to the core principle of person-centeredness, and to the related principles of self-determination and consumer direction."
- Served as a member of the National Association of State Ombudsman Programs' (NASOP) Program Evaluation and Federal Policy committees; the Colorado Department of Public Health and Environment Long-Term Care Advisory Committee; the Assisted Living Advisory Committee; the Long-Term Care Informal Dispute Resolution Committee; and the Independent Informal Dispute Resolution Committee.

From the desk of Anne Meier, the State Long-Term Care Ombudsman

As I close in on the one year anniversary of accepting this position, I want to reflect on all that I have seen and learned in these past several months. This is a dynamic time to be working with elders and while much progress has been made, much work is still left to be done. We are all aware of the surge in the aging population and the concomitant growth in long-term care. We see new facilities opening, and across Colorado, staff members are seeking new ways to better serve residents. There is a strong emphasis on culture change which has brought a deeper commitment to person-centered planning and care. The local long-term care ombudsmen across Colorado, 76 advocates

Top Five Complaints in Nursing Facilities and Assisted Living Residences in 2014

1. Resident Care	843
2. Autonomy/Choice/Preference/Exercise of Rights/Privacy	517
3. Environment	314
4. Admission/Discharge/Eviction	311
5. Staffing	244

Colorado has **220** nursing facilities with a total of **20,685** beds and **612** assisted living residences with a total of **19,656** beds. In Colorado, nursing facilities must be visited by an ombudsman at least once a month and assisted living residences at least quarterly. In 2013, ombudsmen made **7,919** visits - many more than were required - to Colorado's long-term care facilities, to monitor quality of care and quality of life and to investigate complaints.

Across Colorado, local ombudsmen

- Investigated **3,848** complaints of which 77 percent were partially or fully resolved to the satisfaction of the resident.
- Provided **3,770** facility consultations and **6,993** consultations to individuals, residents and family members on a wide range of long-term care issues and concerns.
- Ombudsmen attended **1,435** resident council meetings and conducted **630** community education sessions and **109** training sessions for facility staff.

in total, are in the forefront of holding the banner high, being the voice of the resident. They are the backbone and the promise of this program - they are transforming the face of long-term care.

Even today, there are too many stories of dependent elders who suffer neglect or abuse at the hands of trusted caregivers. In the first six months of mandatory reporting of elder abuse in Colorado, over 3,800 calls were received. Most cases reported were of exploitation or neglect but there were also allegations of physical and sexual abuse. As ombudsmen, we call on society to create a world where elders are revered members of their communities, to be cared for with gratitude for their wisdom and accomplishments. Across Colorado, planners and providers are wrestling with difficult issues such as diminishing resources, training and retention of the elder care workforce, and more residents with complex needs. Against seemingly overwhelming challenges, there are principled people striving to create care environments that are a home for residents that not only meet the "floor" of regulatory compliance but actually raise the "roof" of best quality of life for each individual.

Anne Meier

The Legal Assistance Developer Program in 2014

IN 2014, MARY CATHERINE RABBITT, AS THE LEGAL ASSISTANCE DEVELOPER:

- Responded to **1,359** requests for technical assistance
 - o **421** from local legal providers, ombudsmen and AAA directors
 - o **819** from other professionals, such as attorneys and social workers
 - o **119** from seniors and family members
- Conducted 12 hours of training for a total of **415** participants on: Nursing Homes & Assisted Living Residences; Medicare, Medicaid, the Affordable Care Act, Mandatory Reporting and Elder Abuse, and The Role of the Legal Assistance Provider.
- Continued to serve on the Public Guardianship Advisory Committee to the Chief Justice of the Colorado Supreme Court, which issued its final recommendations to Chief Justice Nancy Rice on July 31, 2014. This committee was an outgrowth of the work of the SB12-0078 Elder Abuse Task Force, on which she served and under whose auspices she continues to provide training to mandatory reporters, as established by SB13-111 and SB14-098. Mandatory Reporting of Abuse of At-Risk Elders became law on July 1, 2014.

Colorado received a demonstration grant from the Centers for Medicare and Medicaid Systems (CMS) in February 2014 and began enrolling fully eligible Medicare and Medicaid enrollees into the Accountable Care Collaborative Medicare-Medicaid Enrollees Program (ACC-MME) in October 2014. Mary Catherine continued to serve on the Beneficiary Rights and Protections Alliance (BRPA) Sub-Committee of the ACC-MME. The Alliance members encouraged the Departments of Health Care Policy and Financing and Human Services to apply for a supplemental grant from CMS to establish an ombudsman, or advocacy, program to assist beneficiaries enrolled in the ACC-MME Program in navigating their way through the new demonstration program. CMS awarded a grant to Colorado to pursue this program of education, training, advocacy and support of those who are “dual-eligibles.” The grant will be implemented in 2015 and will assist enrollees in securing needed benefits and services. The Advocacy Program will be administered by Disability Law Colorado.

Mary Catherine led the effort to establish a Medicaid Regulatory Review Sub-Committee within the Elder Law Section of the Colorado Bar Association in 2014. She now chairs that sub-committee, which has addressed such issues as the availability of pooled trusts for individuals 64 years of age and older, and the increase in the personal needs allowance for residents of long-term care facilities on Medicaid from \$50 per month to \$75 per month, with a built-in adjustment for cost-of-living - the first increase in nearly 20 years.

Mary Catherine was invited to present a workshop at the first Senior Law Day in Grand Junction on May 1, 2014 and has been asked back to present a session at the 2015 Senior Law Day in Grand Junction on May 1, 2015. She continues to serve as co-chair of the Program Committee and member of the overall Planning Committee for the fifth Senior Law

Day in Jefferson County, which will be held on June 13, 2015. Mary Catherine has been part of the Planning Committee for Senior Day at the Capitol for the past three years and serves on the Board of Directors of the Colorado Senior Lobby, which sponsors this event. The 2015 Senior Day at the Capitol will take place on April 1, 2015. Mary Catherine has also continued her involvement with the “Plan for Aging Well” in Jefferson County, serving on the Leadership Committee and the Basic Needs Work Group.

Tracking of legislation and regulations at both the federal and state level occupies a great deal of Mary Catherine’s time and attention and includes, at the federal level, the

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Across Colorado, the Legal Assistance Developer Program served **4,355** older adults as follows:

REGION	CLIENTS SERVED	HOURS OF SERVICE	NUMBER OF CLIENTS NOT ABLE TO SERVE
1	22	52	0
2A	336	216	0
2B	172	875	0
3A	1,435	5,229	417
3B	126	714	64
4	248	1,231	60
5	3	16.5	0
6	160	200	0
7	145	2,278	36
8	17	26	0
9	141	112	10
10	317	654	24
11	912	2,202	70
12	213	109	0
13	100	100	0
14	8	8	0
TOTAL	4,355	14,022	681

The table demonstrates that while some cases can be handled quickly (e.g., preparation of documents), others may need several hours of legal work, including appearances in court or before an administrative law judge. The total number of clients served was 4,355 but their cases required 14,022 hours of legal work, much of which was done on a pro bono basis or at a greatly reduced hourly fee (the average hourly rate across the state was \$65 per hour). In some of the larger communities, legal providers are simply not able to serve all clients in need: hence there were an additional 681 seniors who were not able to be served across the state. A new tracking form, which has been in use since December 2014, will provide additional data about the types of cases handled and their ultimate disposition.

Urgent issues for Colorado's seniors in 2015

Colorado Choice Transitions

Colorado Choice Transitions is the name for Colorado's Money Follows the Person grant. The State Long-Term Care Ombudsman has participated in several implementation meetings to lend support to the goals of the program and to present the ombudsmen's perspective. Ombudsmen statewide have worked to educate residents about CCT and to ensure that each resident interested in transitioning receives the full benefit of the program despite little endorsement from the long-term care provider community. Because the program has only recently been implemented, there are still many barriers to transitioning older adults back into the community. Local ombudsmen have taken on the role of helping to coordinate plans for residents who could benefit from CCT.



The Long-Term Care Ombudsman Team from Region 13 Upper Arkansas Area Agency on Aging at a meeting with State Ombudsman Anne Meier in September 2014.

Mandatory Reporting of Elder Abuse

Mandatory reporting was initiated across Colorado on July 1, 2014. The local ombudsmen received training in mandatory reporting, as well as how to educate facilities about the mandate. While the state provided some education for law enforcement, district attorneys, providers and new categories of mandatory reporters, it has become apparent that implementation has been uneven. In much of the state a report is taken seriously, investigated by law enforcement and followed up. However, in some areas, there is resistance to this full process. Some barriers include a need for further education of front line staff across agencies and inadequate funding for fully implementing the plan. Across the state, calls to Adult Protective Services (APS) are up 39% since the law went into effect. County departments, law enforcement and judicial resources are not sufficient to meet this increase. Legislation was drafted to address some of these deficits. That bill was introduced to the legislature this session. The State Ombudsman's office is monitoring the progress of the bill and will support it as it moves through committees, if needed.

Staffing Issues

More than 100 studies, articles and government documents - not to mention the personal experience of countless residents - have identified the important relationship between staffing and quality of care. Even the best nurses and nurse aides can't deliver quality care if there aren't enough of them. The federal government has found that nursing homes that do not meet a recommended level of 4.1 hours per day of total nursing time per resident may be putting their residents at risk. This is an issue that affects all of us as more than 40 percent of Americans who reach the age of 65 will spend some time in a nursing home during their remaining years. Consumer Voice, a nonprofit action group dedicated to representing consumers of long-term care services, is spearheading a national campaign to influence federal policy makers to embrace the 4.1 recommended staffing level for nursing homes.

Old age pension changes cause hardship for elderly legal residents

New Old Age Pension regulations, effective January 2014, reflected a change in Colorado's Old Age Pension Sponsor Deeming rules that resulted in exclusion of a significant number of elderly legal permanent residents (LPRs) from Old Age Pension and Medicaid programs. Individual representation by the local legal assistance provider resulted in a clarification of the hardship exemptions that helped some of the LPRs. Others were referred to "Connect for Colorado" Health Exchange for assistance in securing health insurance.

An 85-year-old woman was re-applying for Home and Community Based Services (HCBS) but the County Department of Human Services lost the paperwork. In the meantime, they discovered a life insurance policy with a cash-surrender value in excess of \$2,000 and terminated her HCBS services. The life insurance policy was cashed in and the funds were spent on her care until she was once again resource-eligible. The county then re-instated the HCBS services.

*Why is the report in yellow and black?
Because those two colors are the easiest for
aging eyes to read. After moving to the new
color scheme in 2013, we received many posi-
tive comments - especially from older people!*

Stories from the field

Legal assistance provider helps protect the assets of a generous sister

A client, living in a home owned by her sister, was receiving home care services from outside caregivers at her sister's expense. The sister spent down all of the client's own funds on personal care, then began to pay for those services herself by transferring her own money to the client's personal account, spending more than \$25,000 on the client's behalf. When the client applied for Medicaid, she was initially denied. The local legal assistance provider was able to prepare a chronological history and itemized accounting of the sister's funds that were spent on the client's care and obtained affidavits from each caregiver regarding the actual source of funds. In the end, Medicaid benefits were awarded to the client and she was able to move to a skilled nursing facility. All of this proved to be a time-consuming service but it was successful in the end.

A local ombudsman helps a resident find her voice

An assisted living resident with advanced multiple sclerosis asked for ombudsman intervention at a nursing home that was going through a significant management change and building renovations, as well as reassessment of each resident to determine if the home could continue to meet their care needs. The resident told the ombudsman that she did not feel comfortable speaking up for herself, not only because she had difficulty speaking, but also because she feared repercussions from "causing trouble." The resident did not want to move from her room because it provided two air conditioning units which were needed to help with temperature issues related to her MS diagnosis. The resident's physical therapist and the ombudsmen participated in a care conference where they were able to explain the extent to which the resident was able to care for herself, and they advocated that she be permitted to remain in the home and return to her original room once renovated. When the ombudsman followed up with the resident, she had moved back to her original room, and was thankful that there were no further questions regarding her appropriateness to remain in the home. The resident also shared that since the care conference, she had received medical care that improved her ability to speak and that she now felt confident in speaking up for herself. She was able to successfully express her concerns to staff when issues arose. She thanked the ombudsman for helping her to become more confident and said that she feels that she now has a voice and the confidence to advocate for herself.

Securing Medicaid Benefits for Long-Term Care

In several cases, elderly clients were denied Medicaid benefits for long-term care, either because the client (or his or her private attorney) was not familiar with the Medicaid "Transfer Without Fair Consideration" penalties, which were the immediate cause of the denial. In one case, the local legal assistance provider was able to request a "hardship exemption" for the transfer in question. Transfers without fair consideration occur when a senior gives away assets (money or

property) to a relative without receiving anything in return. The presumption is that they did so in order to qualify for Medicaid and this presumption must be disproved in order to become eligible for Medicaid.

Legal assistance providers help clients maintain their finances

An elderly woman contacted the local legal assistance provider for assistance with back-due rent on a lot in a trailer park. The attorney was able to negotiate a sale of the mobile home, which covered the back-due rent. She ultimately moved out of state to be with family but was most appreciative of the assistance she received.

An elderly client sought assistance from the local legal assistance program to defend against a debt collection action by her home owners association for dues owed to the association which had previously been waived. The matter was turned over to mediation.

An elderly gentleman contacted the local legal assistance program for help in changing his will, including the change in title to property owned out of state. The issue was further complicated because of mineral rights attached to the property – and implications for the client's continued eligibility for Medicaid benefits. The matter was ultimately resolved to the client's satisfaction.

Continued from page 5...

Older Americans Act Reauthorization bill, funding for the Elder Justice Act, and continued implementation of the Affordable Care Act, as it impacts seniors. At the state level, she testified in support of SB14-098, which amended the mandatory reporting bill to include a separate crime of Financial Exploitation of At-Risk Elders and SB14-109, which established the increase in the personal needs allowance for residents of long-term care facilities on Medicaid.

The Legal Assistance Developer has certain required duties and responsibilities under the contract with the State Unit on Aging. In addition to providing technical assistance and training to local legal assistance providers, Mary Catherine is required to provide ongoing evaluation of these local programs. This evaluation consists of four on-site evaluations each year (on a rotating basis) and desk evaluations of the remaining 12 local programs. These evaluations are a good way to see what legal trends are developing around the state, as well as to hear recommendations for legislative and regulatory changes that would benefit our older clients.

The Legal Assistance Developer also provides a monthly set of "Advocacy Notes," which include a short summary of proposed bills during the legislative session, as well as helpful resources to the individual providers. Every other year, a two-day training, complete with continuing legal education (CLE) credits, is offered to the local legal assistance providers; a training will be provided in April 2015.

Mary Catherine is a member of the Executive Committee of the National Association of Legal Service Developers (NALSD) which serves as a unified voice for the development of legal services programs for vulnerable elderly people as funded by the Older Americans Act.

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