

The Legal Center's Older Americans Programs:

The Colorado Long-Term Care Ombudsman Program



Legal Assistance Developer Program

2013 ANNUAL REPORT

The Legal Center for People with Disabilities and Older People



Colorado's Protection & Advocacy System

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Residents' Rights Bingo

Individuality



The right to make your own decisions and your own choices

- Your care community is required to make "reasonable accommodation of individual needs."
- What individual choices are most important to you?
- Are there simple pleasures from your former life that you miss? Have you asked if they can be accommodated?
- It's nice when staff get to know your "routine," but you do have the right to change your mind and try something different!

Published by The Legal Center's Mighty Rights Press, Residents' Rights BINGO! has been popular with residents and staff of long-term care facilities since its launch in 1990 as a way to engage older people and their families in learning about their rights. The updated 2011 edition was funded by the Colorado Nursing Facility Culture Change Accountability Board.

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Residents' Rights Bingo

Dignity



You have the right to be treated with dignity

- Do staff always knock before entering your room or bathroom?
- Do staff speak respectfully to you?
- Do you ever feel like you are a bother to staff?
- Do staff come promptly in response to the call light?
- Do staff wait patiently or return quickly if you need help in the bathroom?
- What else does being treated with dignity mean to you?

About The Legal Center

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 senior citizens. 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 the National Disability Rights 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 Colorado Long-Term Care Ombudsman & Legal Assistance Developer programs have been administered by The Legal Center since 1988 along with other disability advocacy programs.

Advocating for a resident and his service dog



A young man who is blind and has had his service dog for eight years had to enter a nursing home. After a few weeks, he was told by the facility that he must put his dog up for adoption because the animal had been ill and the resident couldn't keep up its care. The resident was heartbroken. In addition to needing the dog to help him navigate the facility and retrieve his possessions, he was emotionally attached to it. When it came to light that the animal's illness was the result of staff feeding him table scraps, the ombudsman met with the nursing home staff and went over ADA laws and residents' rights. The nursing home agreed to return the dog to the resident full-time, and to provide training for their staff on the rules regarding service dogs, emphasizing that staff were not to pet or feed the dog. The resident is currently working with Community Choice Transition advocates with the goal of leaving the nursing facility and living independently with his service animal.

We are very pleased to welcome Anne K. Meier as the new State Long-Term Care Ombudsman. For the past six years she has been part of a team of social workers working across a hospice continuum from home hospice to the inpatient unit for Exempla Lutheran Hospice. She has also been a social service coordinator for the Denver Adult Down Syndrome Clinic and a casework supervisor for Clear Creek County Department of Human Services. Early in her career, she was the coordinator of The Legal Center's Protection and Advocacy for Individuals with Mental Illness Program. Anne has an undergraduate degree in social work and a Master of Social Work degree from the University of Denver. She will bring an extraordinary combination of skills and experience to this position.

Mary Anne Harvey
Executive Director
The Legal Center



Anne K. Meier

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 **46** paid ombudsmen employed statewide. Together with the **26** certified volunteer ombudsmen (who gave **2,035** hours in 2013), they strive to improve the quality of life for more than **37,000** 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 (defined as adults 60 and older) under the Older Americans Act. Colorado has a total of **20** paid attorneys and over **100** pro bono attorneys who in 2013 provided legal assistance to **4,641** 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

"I've learned that regardless of color or age, we all need about the same amount of love."
- H. Jackson Brown, Jr.

Raise Concerns



Your voice is heard and respected when you raise any issue of concern

- Care communities are required to promptly address and strive to resolve any grievance brought by a resident.
- You have the right to feel secure in bringing forward any issue—about the quality of your care, about staff, or about another resident—and know that you will not experience discrimination or retaliation as a result.
- If your grievance is not resolved, contact the ombudsman or involve the resident council—you'll likely find that others share your concerns.

Residents' Rights BINGO!

The bright yellow and black design of this annual report celebrates the success of Residents' Rights BINGO! This popular game for the residents, staff and families of nursing homes, was created 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.

Why yellow and black? Because those two colors are the easiest for aging eyes to read.

Development of the new edition 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, or as the coalition prefers, "care communities." Residents' Rights Bingo is played just like regular Bingo—it's a lot of fun and everyone wins!

The Colorado Long-Term Care Ombudsman Program in 2013

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

- Provided **1,763** consultations to individuals, long-term care staff, local ombudsmen and other long term care professionals.
- Conducted five on-site evaluations of local ombudsmen programs and provided ongoing technical assistance and training to the state's **46** full- and part-time ombudsmen and **26** volunteer ombudsmen.
- Conducted regional training in Pueblo, Grand Junction and Denver for ombudsmen on a variety of topics, including community transition, mental health, federal and state regulations, veterans' benefits, resident sexuality, and changes to Medicare and Medicaid.
- Served as a member of the Governor's Community Living Advisory Group, which is developing and recommending changes to the Long-Term Supports and Services (LTSS) delivery system in Colorado.
- Served as Regional Director on the National Association of State Ombudsmen Board of Directors.
- Served on the following Department of Health Care Policy and Financing work groups -
 - Community Choice Transitions - Colorado's Money Follows the Person
 - Demonstration to Integrate Care for Full Benefit Medicare-Medicaid Enrollees
 - Nursing Facility Advisory Council
- Served on the Colorado Partnership to Improve Dementia Care in Nursing Homes. This Coalition works to reduce the inappropriate use of antipsychotic medications for residents with dementia.

COLORADO'S LOCAL OMBUDSMEN:

- Investigated **3, 678** complaints, of which 75% were partially or fully resolved to the satisfaction of the resident.
- Provided **3,866** facility consultations and **6,852** consultations to individuals, residents and family members on a wide range of long-term care issues and concerns.
- In addition, ombudsmen attended **1,361** resident council meetings, and conducted **620** community education sessions and **138** training sessions for facility staff.

Top Complaints in Nursing Facilities and Assisted Living Residences in 2013

1. Resident Care	789
2. Autonomy/Choice/Preference/Exercise of Rights/Privacy	638
3. Admission/Discharge/Eviction	347
4. Environment	302
5. Staffing	233

Colorado has **203** nursing facilities with a total of **20,158** beds and **569** assisted living residences with a total of **17,718** beds.

Nursing facilities must be visited by an ombudsman at least once a month and assisted living residences at least quarterly. In 2013, ombudsmen made **7,678** visits - many more than were required - to Colorado's nursing homes and assisted living facilities, to monitor quality of care and quality of life, and to investigate complaints.

Transition to a new Colorado Long-Term Care State Ombudsman:

It has been my privilege to serve as Colorado's State Ombudsman for five and a half years. I have enjoyed remarkable opportunities to meet residents who are wise and witty, yet sometimes need the advice and advocacy of an ombudsman to improve their quality of life. Thank you to the residents who have shared their wisdom, their life stories, their challenges, and their pain with me. Thank you to the staff in long-term care who work tirelessly in a profession that fails to receive the recognition and remuneration it deserves. Thank you to Mary Anne Harvey and all the staff at The Legal Center for supporting and strengthening me and the ombudsman program statewide. But most of all I thank the many local ombudsmen who have graced my days with their courage, compassion, and tenacity on behalf of residents across Colorado. I have learned so much from all of you and I will carry you and this mission in my heart always.

Shelley Hitt

"Age is of no importance unless you are a cheese."

- Anonymous

The Legal Assistance Developer Program in 2013

MARY CATHERINE RABBITT, AS THE COLORADO LEGAL ASSISTANCE DEVELOPER:

- Responded to 1,335 requests for technical assistance
 - 348 from local legal providers, ombudsmen and AAA directors
 - 790 from other professionals, such as attorneys and social workers
 - 197 from seniors and family members
- Conducted 20.5 hours of training for a total of 395 participants on: Nursing Home Litigation, Medicare, Medicaid, Long-Term Care, the Affordable Care Act, the Federal Budget, Nursing Home Residents' Rights and Mandatory Reporting of Elder Abuse.

Across Colorado, the Legal Assistance Developer Program served **4,416** older adults as follows:

REGION	CLIENTS SERVED	HOURS OF SERVICE	NUMBER OF CLIENTS NOT ABLE TO SERVE
1	25	50	0
2A	353	254	0
2B	164	999.5	0
3A	1,321	4,254.2	631
3B	109	152	73
4	221	1088.0	0
5	10	19	0
6	182	336	0
7	70	1,636	42
8	9	13	0
9	288	159	0
10	299	515	20
11	1,111	3,836	75
12	158	91	1
13	100	120	0
14	6	6	0
TOTAL	4,416	13,828	842

The Table demonstrates that while some cases can be handled quickly, others may need several hours of legal work. The total number of clients served was **4,416**, but their cases required **13,828** hours of work, much of which was done on a pro bono basis or at a greatly reduced fee. In some of the larger local communities, legal providers simply cannot meet the need; hence there were an additional **842** seniors who were not able to be served across the state.

Mary Catherine was appointed by Chief Justice Michael Bender to serve on the Public Guardianship Advisory Committee, whose charge was to assess the unmet need for public guardianship services, to identify workable options and models to address the need, and to make recommendations to improve the Colorado guardianship system as a whole. The underserved population includes adults who are incapacitated, indigent and isolated from family and friends. The need is statewide, but greatest in the Denver Metropolitan area and larger cities. The committee met for over 20 hours in 2013 and is making recommendations to the Colorado General Assembly this year for legislation to be introduced in 2015. This committee was an outgrowth of the work of the SB12-078 Elder Abuse Task Force, as affirmed by the General Assembly in 2013 with the passage of SB13-111, "Concerning Abuse of At-Risk Adults." Mary Catherine had previously served on the Elder Abuse Task Force and has provided training to mandatory reporters.

If Colorado receives a grant from the Centers for Medicaid and Medicare Systems (CMS) in 2014, Mary Catherine looks forward to monitoring the implementation of the state's "Demonstration to Integrate Care for Full Benefit Medicare-Medicaid Enrollees." She serves on the Beneficiary Rights and Protections Sub-Committee of the Stakeholders Group for the project and has consistently advocated for an ombudsman-type program to assist enrollees in securing needed benefits and services

Mary Catherine planned and presented the first training event for local legal assistance providers and pro bono attorneys across the state. This consisted of a two-day continuing education program in May 2013 on topics of interest to elder law attorneys, with continuing legal education (CLE) credits. Training was provided by outstanding members of the Elder Law Section of the Colorado Bar Association, who donated their services. This event was well-received and will be repeated in 2015. Mary Catherine continued her involvement with the Planning Committee for annual Senior Law Days programs in Jefferson County and will speak at the first Senior Law Day in Mesa County in May 2014. Mary Catherine helped to establish, and is chairing, a Medicaid Regulatory Reform Sub-Committee of the Elder Law Section of the Colorado Bar Association, which will continue to monitor Medicaid regulations that impact older adults.

Stories from local legal assistance providers

Through the efforts of the local bar association, one local legal assistance program has been recruiting volunteer attorneys to handle individual housing eviction cases with the local housing authority, and to mediate these cases without the necessity of going to trial.

A senior was at risk of losing her home as the previous owner, who was carrying the mortgage, was not applying the mortgage payments properly and was pursuing an eviction of the senior. The local legal assistance provider was able to extricate the senior from the mortgage with the previous owner and transfer the mortgage to another entity. She was able to catch up with her mortgage payments and remain in her home.

Colorado Ombudsmen: A wise investment Important Issues in 2014

Transfer and Discharge

Ombudsmen are increasingly being asked to play a major role in the resolution of complicated resident discharge complaints. It has become common practice for nursing facilities to refuse to re-admit residents who have been in the hospital for evaluation and treatment. These residents have a variety of special needs as a result of dementia, mental illness or traumatic brain injury or a combination of all of these conditions. This leaves the resident with limited options for alternative placement, especially in more rural communities. Ombudsmen have become adept at intervening to craft individual solutions and forge local partnerships, but they are working within a broken and under-resourced system. Colorado urgently needs more specialized care and services for “nontraditional” nursing home residents, such as people with major mental illness, those aging out of the correctional system, and younger adults with traumatic brain injuries.

The Colorado Partnership to Improve Dementia Care

This group of long-term care professionals is committed to a reduction in the inappropriate use of anti-psychotic medications for nursing home residents with dementia. State and local ombudsmen are striving to educate residents, their families, and health care staff about the dangers the medication can pose if overused: in addition to a higher risk of death and disability, anti-psychotic medications can sometimes make patients more confused and depressed. The partnership advocates for care that is person-centered and that seeks to understand and address residents’ physical, mental, emotional, and social well-being before resorting to anti-psychotic medications. Examples of ways to address behavioral symptoms without medication include stronger family involvement, consistent staff assignments, increased physical activity, better pain management and individualized activities.

Quality of Care in Assisted Living Residences (ALR)

Colorado continues to witness a steady expansion in the number of assisted living residences. These facilities are not regulated at the federal level and state regulation falls far short of the extensive oversight needed, especially compared with that given to nursing homes. Ombudsmen observe many ALRs admitting residents whose needs exceed the ability of staff to provide care, staff members who lack the training to provide appropriate care for residents with dementia, and lack of individualized care. Potential solutions include: increasing reimbursement and offering financial incentives to provide quality care, strengthening regulation by state agencies, educating consumers about quality care and how to get it, and bolstering mental health care for elders. Ombudsmen are working to strengthen assisted living standards, which is essential to protecting vulnerable residents and ensuring appropriate care.

Emergency Preparedness

Since the devastating Hurricane Katrina in 2005, our nation has endured a series of natural and man-made disasters including floods, tornadoes, and influenza outbreaks. In 2013, Colorado experienced unprecedented wild fires and historic floods. These events affected numerous long-term care facilities, their residents, and staff. There was no loss of life in our facilities, but the disasters caused significant property damage and resident displacement, resulting in anxiety and fear for vulnerable older adults. As we move forward, we must all learn from these events and be even better prepared to transport, relocate and provide appropriate care for our elders in long-term care as well as those living in the community. To enhance resident and patient safety we, as a community, need a more comprehensive approach to the complexities and unpredictability of disasters, beginning with better contingency planning and improved training for first responders and health care staff. State and local ombudsmen should take a seat at the table to review and evaluate current long-term care emergency preparedness protocols and implementation of best practices and lessons learned from past disasters.

The importance of resident councils

Resident Councils are designed so that a group of residents can make joint decisions and then advocate together for the type of living arrangements they need or desire. A local ombudsman had to intervene on residents’ behalf when the administration of a nursing facility decided to adapt the chapel into a game and TV room despite concerted protests from residents that they wanted to keep the chapel for bible study and quiet reflection. The ombudsman consulted with residents and facility staff as well as oversight agencies to work for a reversal of the management’s decision and within weeks the facility agreed to re-establish the chapel to the residents’ delight.

Fear of Retaliation: Ombudsmen and Residents Work Together for Change

The ombudsman visiting this home on an initial visit sensed a lot of tension between the residents and the manager. One resident told her that all the residents knew if they made the manager angry, she would see that they were evicted. The examples residents gave the ombudsman ranged from threats of eviction for falling or needing too much assistance, to the residents' inability to evacuate independently in the event of a fire. Over the next couple of months the ombudsman developed a good relationship with most of the residents who all complained of the same issues. The ombudsman made several attempts to reason with the manager but was unsuccessful because the manager felt that her threats were justified. Not seeing any results, the ombudsman talked to the manager's supervisor who was concerned and agreed to investigate internally. The manager was assigned to leadership training to "provide her with an improved understanding of the regulations."

Things came to a head when the manager requested a meeting with her supervisor and the ombudsman. The residents had become increasingly uneasy being

seen talking to the ombudsman and the very real fear of retaliation was obvious. The meeting did not go well, and the manager denied doing anything wrong. The meeting ended abruptly, but progress was made in highlighting the problem and the manager's attitude and behavior toward residents. The ombudsman continued to monitor the situation and stayed in touch with residents. Following an investigation by the Colorado Department of Public Health and Environment, which resulted in the citation of five resident rights deficiencies, the manager resigned without notice the next day.

The new manager went to great lengths to change the culture of the facility and the residents report being very satisfied. The residents now feel safe and secure in their home, and most importantly they feel heard. They have no fear of addressing concerns with the new manager. Staff and residents have thanked the ombudsman for sticking to it and helping them. Their home is now a peaceful and beautiful place, and the residents and staff all feel empowered.



Ombudsman Cindy Webb shared these photographs of residents at Julia Temple Healthcare Center. Every Friday at 2:00 p.m., the residents from one of the "neighborhoods" gather together to create the meal for everyone in the home for that night's dinner. One resident puts together the boxes so that the pizzas will be just like those purchased outside. This is an example of person-centered care that has resulted in residents taking a more active role in the life of the facility and doing things that make it feel more like home.

Statewide Contact Information

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