

Vermont Long Term Care Ombudsman Project

**Annual Report to the
General Assembly and the Governor
2006**

**VERMONT
LONG TERM CARE OMBUDSMAN
PROJECT**

Annual Report

October 1, 2005 - September 30, 2006

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Table of Contents

Introduction	1
Choices for Care Complaints	2
Facility Complaints	3
Complaint categories.....	4
Who makes complaints.....	6
Complaint disposition.....	7
Other Activities	8
Volunteer Program	8
Funding	9
Looking Ahead	10

Appendices

Appendix 1 - Complaints in Major Complaint Categories	12
Appendix 2 - History of the Ombudsman Program	14
Appendix 3 - Staff Roster	16
Appendix 4 - “CARE Matters” (Resident Poems and Essays)	17

VERMONT LONG TERM CARE OMBUDSMAN PROJECT

ANNUAL REPORT
OCTOBER 1, 2005 - SEPTEMBER 30, 2006

*The other night I had to go to the bathroom and they didn't know.
I was out in the hall.
My neighbor, do you know her?
She's the one who is always stooped over in her chair.
She can't talk very well.
She went to the girls and told them to take better care of me.
She always looks out for everyone.*

“Neighbor” by Julia Aquaviva,
Haven Health Center Nursing Home
Rutland, Vermont

Introduction

The Vermont Ombudsman Project of Vermont Legal Aid, Inc. has been protecting the health, welfare and rights of long term care residents for over 13 years. However, the role of the ombudsmen changed significantly last year after the state implemented Choices for Care, a program that allows people who need long term care to receive services in the community rather than in nursing homes.

Early in 2005, the Vermont Legislature directed the project to assist individuals who apply for and enroll in Choices for Care. The state increased the project's funding so that in addition to serving people in more traditional settings like nursing homes, residential care homes and assisted living residences, it could also help individuals who receive long term care in the community.

Regardless of the setting, the project's primary responsibility is to help individuals find solutions to specific problems. And, while working to resolve these individual complaints, ombudsmen often facilitate changes in attitudes, practices and policies that improve the care and quality of life for all Vermonters who receive long term care services.

In addition to their specific mandate to resolve complaints, ombudsmen also have a broader mandate to protect the safety, welfare and rights of individuals who receive long term care services. Ombudsmen:

- (1) help residents seek administrative, legal, and other remedies to protect their rights, health, safety and welfare;
- (2) review and comment on any existing and proposed laws, regulations or policies that pertain to the rights and well-being of residents;
- (3) educate community members concerning the needs of long term care residents; and
- (4) support the development of resident and family councils.

The ombudsman project plays an important role in improving Vermont's long term care system through education and administrative and legislative advocacy.

The project is staffed by a director, six regional ombudsmen and a volunteer coordinator. There are also 20 certified volunteer ombudsman who help the project maintain a regular presence in the state's 43 nursing homes, 111 residential care homes and six assisted living residences.

What is a Complaint?

In FY 06, ombudsmen responded to 709 complaints. The federal Administration on Aging (AoA) defines a complaint as any concern that is brought to the attention of the ombudsmen relating to the health, safety, welfare or rights of a resident. The complaint statistics in this report give an overview of the issues that were important to individuals receiving long term care services last year.

Choices For Care Complaints

In FY 2006, the ombudsman project closed 36 complaints concerning individuals receiving services through Choices for Care. We anticipate that it will receive more CFC complaints next year. Unlike last year, in FY 2007 we will be fully staffed for the entire year. And, as a result of extensive outreach during the past

year, the public and providers will be better informed about how to access ombudsmen. The project is also in the process of refining how it records and retrieves information about CFC complaints and will prepare a more detailed report next year.

Last year we received a wide range of CFC complaints. Individuals contacted us because:

- they were denied assistive devices or equipment, including catheters, and wheelchair repairs;
- their personal care or home maker services were reduced or terminated;
- they wanted their care giver to come at a different time or they wanted a different care giver;
- they were discharged to a community setting with no services in place;
- their request for a variance was denied;
- they were unhappy with their case management services; and
- they could not get a timely assessment .

All 36 CFC complaints were verified. Approximately two thirds were either partially or fully resolved to the satisfaction of the individual receiving services. The remaining third either were not resolved, withdrawn, needed no action or were referred to another agency.

Facility Complaints

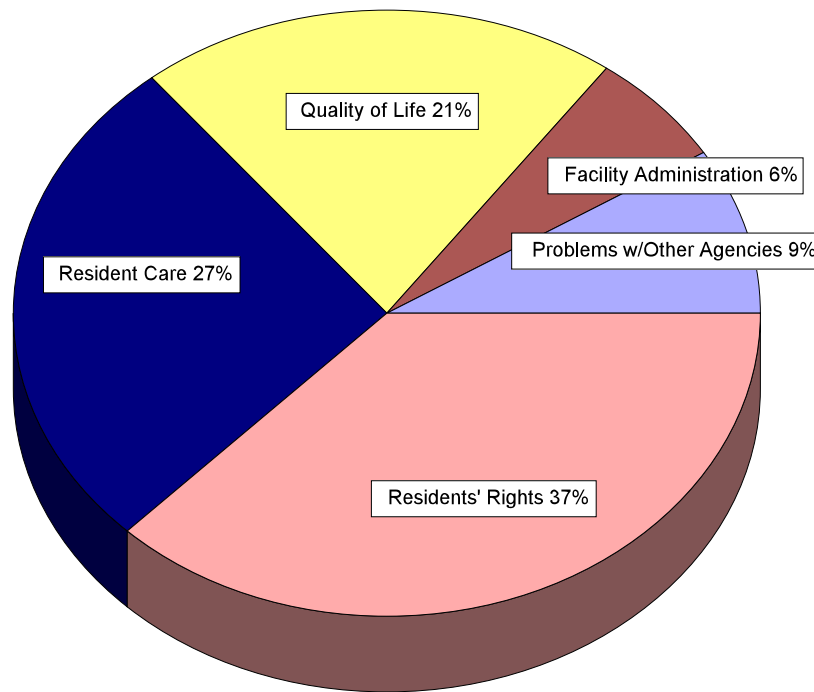
The remaining 673 complaints involved residents in traditional long term care settings. The AoA and the state Department of Aging and Independent Living (DAIL) require us to collect and record specific information about each of these

facility related complaints. We must note the type of complaint, who made the complaint and how it was resolved. It is important to keep in mind that not all the complaints we receive are against facilities.

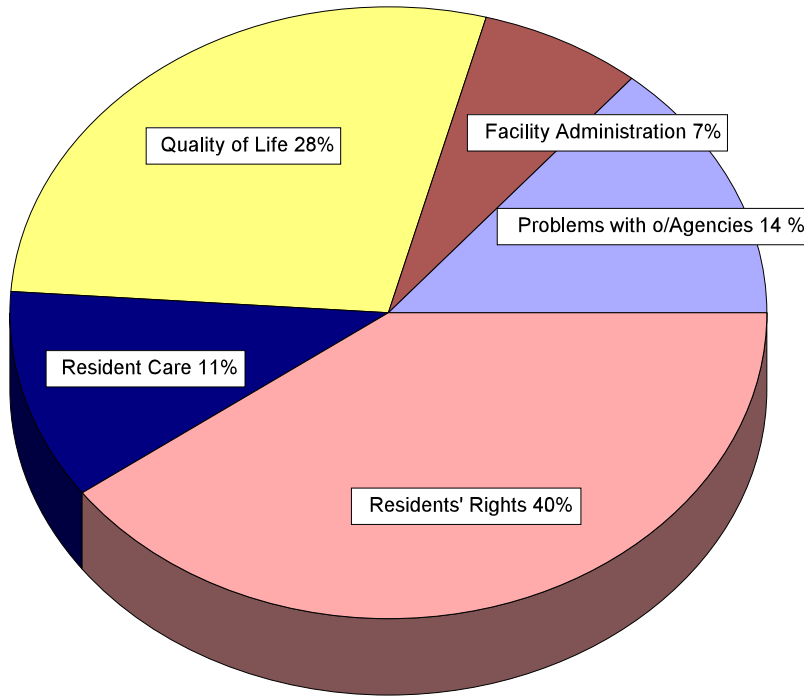
Complaints are divided into five major categories. This allows us to monitor complaint trends from year to year. (See Appendix 1 for the specific number of complaints in each category.) As in prior years, we received more complaints about residents rights than any other category. The percentage of these complaints dropped from 40% to 37% in nursing homes and from 47% to 40% in residential care homes. The percentage of complaints about resident care and quality of life increased slightly in both settings.

Complaints in the five major complaint categories:

Nursing Homes



Residential Care Homes



Why did residents and their families turn to us for help?

- A grandson visited his grandmother. He and his young son found her naked on her bed.
- A resident's dinner sat out in the hall for over half an hour. Even after someone brought him his tray he still could not eat because no one helped him sit up.
- A resident was crying when her daughter arrived for a visit. She was upset because an aide had yelled at her in the middle of the night when she needed help to the bathroom.

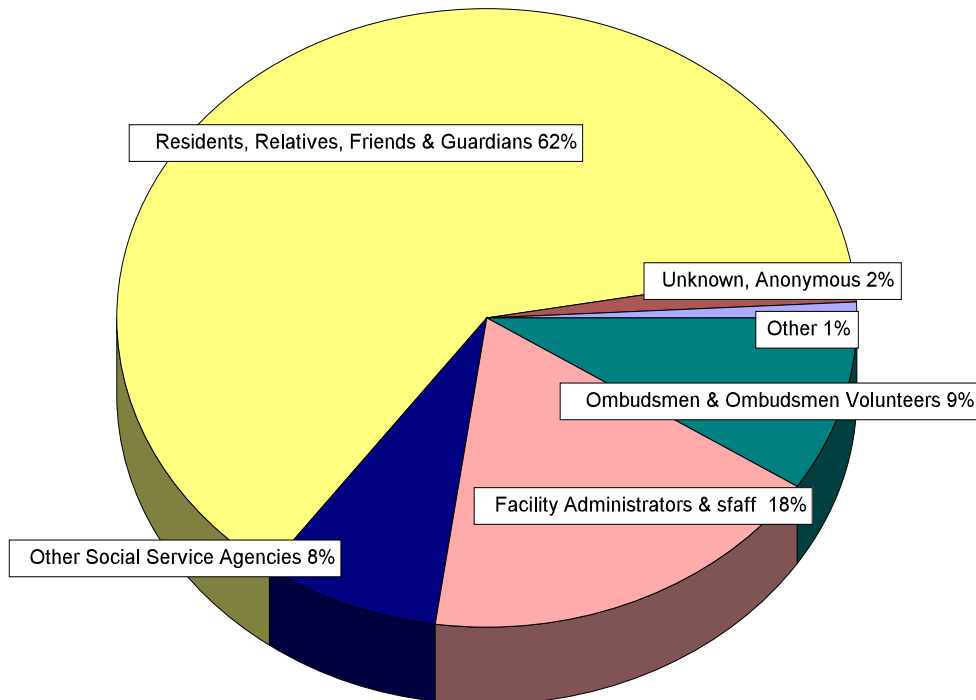
Who makes facility related complaints?

Ombudsmen investigate every complaint they receive. Regardless of who makes the complaint, ombudsmen must represent the interests of long term care residents and resolve problems to their satisfaction.

In FY 2006, approximately 62% of the complaints we received were made by the residents, individuals receiving services or their families or friends. About 18% of our complaints were initiated by facilities themselves. These percentages change very little from year to year.

We welcome the opportunity to work with facilities and other providers to improve the quality of care and quality of life for each resident. A home might contact the ombudsmen with a question about financial exploitation or about how residents can finance their care. Staff often contact ombudsmen when confronted with a particularly challenging resident or unique behavior problem. Many homes or providers simply recognize that residents need an independent advocate, like an ombudsman, to make sure that their concerns are understood and addressed.

Who Makes Complaints?

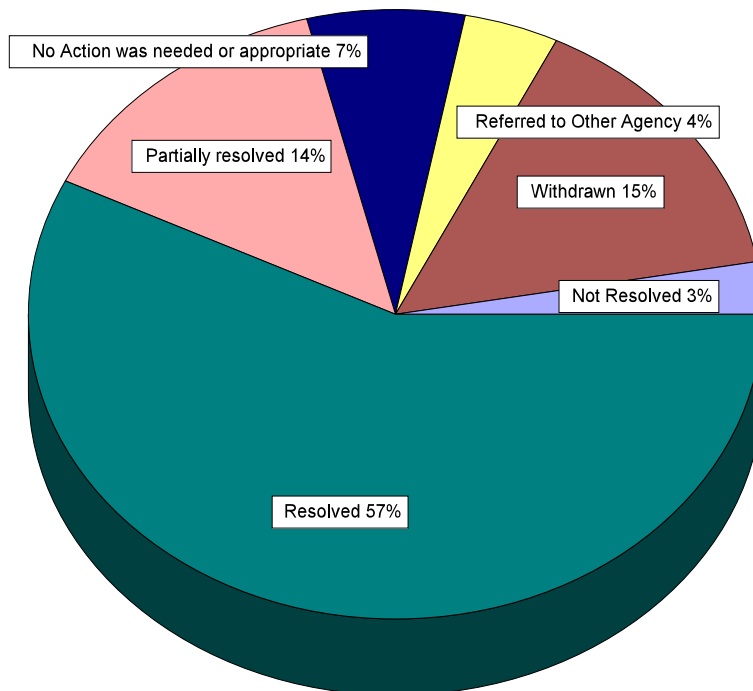


Resolution of facility based complaints

Ombudsmen always try to talk with the resident to determine the nature of the problem and find out how the resident would like it to be resolved. If we cannot get direction from the individual, we work with whomever has the authority to make decisions for the resident, like a guardian or agent. In some cases, the ombudsman cannot verify that a problem actually exists. For example, Mr. Brown complains that an aide has been banging on his door during the night. The ombudsman investigates and finds that a broken fence in a neighbor's yard is causing the noise. Although this still falls within the definition of a complaint, it is not a "verified" complaint. And, the ombudsman will still work to resolve the problem to Mr. Brown's satisfaction.

Over 82% of the complaints resolved in FY 06 by the VOP are verified and reflect very real problems and concerns. Approximately 71% of all complaints were either partially or fully resolved to the satisfaction of the individual.

Complaint Disposition



Other Activities

Consultations

In addition to investigating complaints, ombudsmen educate consumers and facility staff on issues that affect residents. Last year ombudsmen staff and volunteers delivered 31 in-service trainings to facility staff on topics such as residents rights and behavior and transfer/discharge issues. Regardless of the in-service topic, the primary goal of the ombudsman is to remind staff that each resident is unique with his or her own story, family, abilities, talents and preferences. And, that they each deserve individualized care.

We also responded to over 247 requests for assistance from facility staff, residents, family and friends concerning residents' rights, care, advance directives and placement issues.

Resident and Family Councils

Paid staff and volunteers attended 53 resident council meetings. Every nursing home is required under state and federal law to have a resident council. A resident council is a group of residents who meet regularly to discuss specific concerns, plan activities and make suggestions. Homes must designate a specific staff person who is responsible for assisting the council and who ensures that the home listens and responds to the council's concerns and suggestions. At the council's invitation, ombudsmen attend meetings to help residents identify problems, develop suggestions or recommendations and monitor the homes response.

Volunteer Program

The Ombudsman Project relies on certified volunteers to maintain a regular presence in Vermont's 160 nursing homes, residential care homes and assisted living residences. They are our eyes and ears in the facilities. They respond to individual complaints, attend resident council meetings and monitor conditions in each home. In FY 2006, 21 volunteers contributed approximately 2,200 hours to the program.

Volunteers participate in a comprehensive training program before they are

certified. The program begins with 20 hours of classroom training. After the classroom training, volunteers "shadow" their supervising regional ombudsman for 30 hours of facility based field training.

Generally, certified volunteers are assigned to at least one nursing home and one residential care home. They work closely with the regional ombudsmen who provide technical assistance and on-going supervision. Once a month, volunteers attend an in-service session where they receive additional substantive training from the state and regional ombudsmen, health care providers and representatives of state agencies.

Last year, in honor of national Residents' Rights Week, volunteers spearheaded a special project, entitled "CARE matters" (Choice, Accountability, Rights, Empowerment). Volunteers throughout the state encouraged residents to pick up their pens and take a moment to reflect on how "CARE Matters" to them. The residents submissions are compiled in Appendix 4 of this report. These personal statements help us understand what is important to residents and why good care does matter.

<u>Certified</u>	Dorothy Seale-Brown
<u>Volunteers:</u>	Linda Sturgeon
Richard Ashton	Ellie Tobin
Paul Bassett	Jane Thompson
Shirley Clark	Steve Williams
Kevin Christi	
Ann Doucette	<u>Data Entry:</u>
Phil Gray	Ann Crider
Laura Hopper	
Melissa Hoppes	<u>Volunteers in</u>
Anzi Jacobs	<u>Training:</u>
Winifred McDowell	Genie Christiansen
Kate McGowan	Sally Lindberg
Marty Quinlan	Jane McDay
Bill Ringwall	Lynn Reilly
Carol Schoneman	

Funding

In FY 2006 the Long Term Care Ombudsman Project received \$629,633 from the Department of Aging and Disabilities to provide long term care ombudsman services in Vermont. This amount includes \$74,301 in Older Americans Act (OAA) Title VII funds, \$223,614 in OAA Title III funds, and \$331,718 in state funds.

Looking Ahead

Choices For Care

In FY 2006 the long term care ombudsman project began providing services to individuals receiving home based long term care through the Choices for Care program. The project's primary responsibility is to resolve individual complaints. As a result of this work it has identified systemic issues that affect beneficiaries' ability to access services and the quality of those services. These issues include:

- ▶ lack of support for individuals who hire and direct their own care givers;
- ▶ shortage of care givers in the community;
- ▶ difficulty accessing both CFC and hospice services at the same time, and;
- ▶ inadequacy of CFC notices.

The ombudsman will continue to work to address these issues over the next year.

Guardianship Reform

Many individuals who receive long term care services are often under unnecessary or overly restrictive guardianships. Over the past few years, the ombudsman project and other stakeholders advocated for legislative changes that strengthened the right to counsel, clarified that persons under guardianship retain certain legal and civil rights, and required additional court oversight when a guardian wants to move someone to a more restrictive living situation. Additional statutory reforms are needed to:

- ▶ clarify how medical decisions are made;
- ▶ ensure adequate protections during the emergency guardianship process;
- ▶ clarify the guardians powers; and

- ▶ guarantee that the guardian is granted only those powers needed to address the person's functional limitations and specific circumstances.

Over the next year, the ombudsman will continue to work with stakeholders to bring about these statutory reforms.

Respectfully Submitted,

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Appendix 1

VERMONT LONG TERM CARE OMBUDSMAN PROJECT

Number of Closed Complaints in the Five Major Complaint Categories

October 1, 2005 - September 3, 2006

1. RESIDENTS' RIGHTS	Nursing Facilities	Residential Care Homes And Assisted Living residences
A. Abuse, neglect, exploitation	3	2
B. Access to information	31	1
C. Admission, transfer, discharge	54	12
D. Autonomy, choice, dignity, privacy, staff attitudes	74	27
E. Financial, property	37	10
TOTAL	199	52

2. RESIDENT CARE	Nursing Facilities	Residential Care Homes And Assisted Living Residences
F. Care	115	12
G. Rehabilitation, maintenance of function	31	1
H. Restraints	3	1
TOTAL	149	14

3. QUALITY OF LIFE	Nursing Facilities	Residential Care Homes And Assisted Living Residences
I. Activities and social services	33	14
J. Dietary	48	8
K. Environment	31	15
TOTAL	112	37

4. ADMINISTRATION	Nursing Facilities	Residential Care Homes And Assisted Living Residences
L. Policies, procedures, attitudes, resources	7	5
M. Staffing	25	4
TOTAL	32	9

5. PROBLEMS WITH OTHER AGENCIES	Nursing Facilities	Residential Care Homes And Assisted Living Residences
N. Certification, licensing agency	0	2
O. State Medicaid agency	7	6
P. Others	42	12
TOTAL	49	20
TOTAL FOR ALL COMPLAINT CATEGORIES	541	132

NUMBER OF CLOSED NH, RCH, AND ALR COMPLAINTS: 673
 NUMBER OF CLOSED COMPLAINTS IN OTHER SETTINGS : 36
TOTAL NUMBER OF CLOSED COMPLAINTS: 709

HISTORY OF THE OMBUDSMAN PROGRAM

At the National Level:

The Long Term Care Ombudsman Program first began in 1972 in response to growing concerns about the quality of care and quality of life in nursing homes. The program originated as a five state demonstration project mandated by the Older Americans Act (OAA). In 1978, the OAA was amended to require each state to establish an ombudsman program. In 1981, Congress expanded the scope of the ombudsman program to include residential care homes, but it did so without allocating any additional funds.

In 1987, Congress strengthened the ombudsmen's ability to serve and protect long term residents. The Nursing Home Reform Act of 1987 (OBRA '87) required nursing home residents to have "direct and immediate access to ombudspersons when protection and advocacy services become necessary." The 1987 reauthorization of the OAA required states to guarantee ombudsmen access to facilities and to patient records. It also allowed the state ombudsman to designate local ombudsmen and volunteers to be "representatives" of the state ombudsman with all the necessary rights and responsibilities.

The 1992 amendments to the OAA incorporated the long term care ombudsman program into a new Title VII for "Vulnerable Elder Rights Protection Activities". The amendments also emphasized the ombudsman's role as an advocate and agent for system wide change.

In Vermont:

Vermont's first ombudsman program was established in 1975. Until 1993, the state ombudsman was based in the Department of Aging and Disabilities (DAD). An ombudsman worked in each of the five Area Agencies on Aging. In response to concerns that it was a conflict to house the state ombudsman in the same Department as the Division of Licensing and Protection, which is responsible for regulating long term care facilities, the legislature gave DAD the authority to contract for ombudsman services outside the Department.

Since October of 1993, the Vermont Long Term Care Ombudsman Project, a

special project within Vermont Legal Aid, Inc. (VLA). has been providing ombudsman services to Vermont's long term care residents. Ombudsman staff are based in VLA offices throughout the state.

In 2005 the Vermont legislature expanded the duties and responsibilities of the long term care ombudsman project. Act No. 56 expands ombudsman services to individuals who receive home based long term care through the Medicaid waiver, Choices for Care. The project now has authority to respond to complaints about home based care. It also has the responsibility to review and comment on any existing and proposed laws, regulations or policies that pertain to home based long term care.

Appendix 3

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Appendix 4

“CARE Matters”

This past year, the Vermont Long Term Care Ombudsman Project, held a creative writing challenge for Vermonters living in long term care facilities. The theme of the challenge was “CARE Matters.” (**C**hoice, **A**ccountability, **R**ights and **E**mpowerment.) These essays and poems reflect a wide range of perspectives and experiences and they help us understand what CARE means to residents and why it matters to them.

This project was modeled after the National Citizens Coalition for Nursing Home Reforms’ 2006 Residents’ Rights Week writing contest.

The VOP would like to thank all the residents who took the time to record their stories and who generously allowed us to share them in this report. We would also like to give special thanks to our volunteers and to Diane Swan, for her guidance, expertise and technical assistance.

1.

I feel cared for all the time. I wait in the morning to get dressed, because they are taking care of others. Today one of the girls laid on my bed and one sat in the chair. They seem to feel my place is OK. I know they'll come and take care of my clothes and get out something for me to wear. If I don't like it they get out something else. If they don't I say it louder. I think one of the aides is bringing me tomatoes she has to buy, lines them up on my windowsill. She brought me cherry tomatoes ("see...the big ones had babies!") and takes them to the kitchen to get them fixed for me for supper.

But my attitude may be different towards people. That has a lot to do with the kind of care you get. There's some here that don't even know their names. I have a brain and can converse. I'm sure they love me. None that come are disagreeable, but I'm not disagreeable to them - works both ways. Since I'm in the wheelchair people reach out to me and think I can't do, and I've learned to say, if they don't notice, "Will you please...?"

Ethel Ryan
Heaton Woods Residential Care Home
Montpelier, Vermont

2.

The essence of a distinguished organization is found in the collective hearts of those who participate in its function. Throughout all levels of residential care, it is generosity of spirit, that quality of thinking of others first, which enables positive experiences to accumulate exponentially. Patience, a smile, a few words of encouragement, a listening ear, and a sincere compliment have the potential to produce richly rewarding experiences for all involved.

For the past year, Thompson House has provided me a pleasant, comfortable home and a family that I would not otherwise have. I am most grateful to my primary care physician for properly evaluating my needs and for guiding me here to have those needs so well fulfilled.

Marie Z. Waugh
Thompson Residential Home Residential Care Home
Brattleboro, VT

3.

I wish they would make it more clear what we can and can't do. When two girls who worked here were pregnant and had babies I impulsively sent a small check with the welcoming baby cards. I found out later that was a "no no". I was truly sorry I had upset people, especially the new mothers. I really thought this was a special event, bringing a new person into the world!

I'm sure I've had more than my share of care - especially my best friend from Maine who writes to me every week. She takes an interest in my family. This is a very special kind of care for which I am most grateful.

*Ruth Thompson
Heaton Woods Residential Care Home
Montpelier, Vermont*

4.

There is so much of goodness,
In the hearts of humankind,
That we, seldom, choose to look for
So we seldom ever find;
We are apt to see each other
In the light of what we say
And the things we find unpleasant
To our stature or our ways.

But there is a depth of goodness,
In each heart of humankind
That is gift of God's creation,
For our peace of heart and mind,
So light your lamp with kindness,
And set your heart aglow,
Then let it shine before all men,
Wherever you may go.

*Sister Patricia Dolan
St. Joseph Kervick Residence Residential Care Home
Rutland, Vermont*

5.
When I Broke My Leg

When I broke my leg, do you remember that time?
It was a damn Saturday.
I fell on the floor and I'm crying and screaming. Oh boy did it hurt.
One woman came running.
The other woman just stood there.
They put me on the chair.
The other one asked if I wanted to go to the hospital.
She kept her cool and came over and fixed it.
She's a good one.
She was the only one who could take blood one time.

6.
Neighbor

The other night I had to go to the bathroom and they didn't know.
I was out in the hall.
My neighbor, do you know her?
She's the one who is always stooped over in her chair.
She can't talk very well.
She went to the girls and told them to take better care of me.
She always looks out for everyone.

*Julia Aquaviva
Haven Health Center Nursing Home
Rutland, Vermont*

7.

Rememberings on a Volunteer Ombudsman and an Aide

There's times when I need advice and you show up every time.
There's something about the way you read my mind.
The other girl does too.
I was always shooting my mouth off to make myself heard.
She was beautiful and understanding.
I would sit down in a seat and think oh my goodness what will I ever do now?
She would come along and know what I needed.
I could hear her footsteps coming, just like ESP.
How did you know I needed you?
She was so calm.
No matter what I told her she always made sense.

*Marguerite Lancour
Haven Health Center Nursing Home
Rutland, Vermont*

8.

Here at Heaton Woods
I found a lot of things to care about.
I made good friends
and enjoyed time together.
I'm glad we have so many activities -
exercise, creative writing, bingo,
Pokeno, painting, singing
and challenging questions.
I love to go on walks almost every day
to Vermont College.
I'm happy I can walk twice a day
while many residents can't walk at all.

*Helen Donnis
Heaton Woods Residential Care Home
Montpelier, Vermont*

9.

OLD HOME, SWEET HOME

My name is Billy Pike, very nearly fifty years old, and currently residing at the Union House Nursing Home & Rehab. Ctr. in Glover, Vermont for the second time. My first stay I was under the thumb of the Vt. Dept. of Corrections, and I now know, regretfully, that I took a lot for granted, as this time, I almost lost my sanity and my life because of alcoholism and drug abuse.

Union House, to me, is a very unique place because of its rustic and homelike environment, unlike gleaming, mechanical, newer institutional and impersonal facilities. The nurses and nurse's aides are always there to help with a real smile and chat with you when you feel blue. Also, both nice and unique, is that all the departmental staff (ex. laundry, kitchen, and maintenance) are kind and very caring people.

The activities coordinator, her staff, and volunteers, are indeed both essential and exceptional, scheduling and implementing a month in advance something to look forward eagerly to each day to do. To behold heartfelt smiles and hear the laughter, not oft enough heard, to me is both precious and priceless. Without activities there would be no sunshine within.

I must state, that the administrative staff here is, without exception, exceptional. I am a fortunate man indeed, to still possess my perception and fairly adequate vocabulary. I often envision Union House as a valiant, worn battleship. Every hand of every department works hard to keep it afloat. The captain and the first mate "navigate" pretty darn well.

In closing I hope whomever reads this knows that this is my own individual opinion, and that there are certainly tough times. For those, I look to Jesus Christ.

OLD HOME, SWEET HOME. SO GLAD THAT IT'S STILL HERE,
I DON'T LIKE TO LIVE ALONE, BUT ONE OF MANY FEARS.
OLD HOME, SWEET HOME, SOMEDAY I'LL SAY GOODBYE,
TO TRY A NEW DREAM ON MY OWN, I'LL PROBABLY EVEN CRY....

William Pike
Union House Nursing Home
Glover, Vermont

10.

When I was six years old
I had two sisters and six brothers.
That year I lost my father. I learned
what the word care really meant.

My mother really showed that she cared
when she took on the real task
of raising nine children alone.
She did a wonderful job of caring for us all.
Nine of us came through with flying colors.

We are still close
even though we live in many different states.
We get together on special occasions.
There's only seven of us left
but we still care for each other.

*Claire Charron
Heaton Woods Residential Care Home
Montpelier, Vermont*

11.

Care means to me that someone thinks of me instead of just forgotten about.

I was in the hospital for several days and then transferred to the nursing home. I didn't remember anything about being sick so when I got well I was very pleased to find out that one of the caretakers had called an ambulance to take me to the hospital. I had a very high temperature and was very sick from an infection in my blood.

When I came back to the home quite a few of the residents met me on the porch with the staff. I was very happy and knew that I had been taken care of when I really needed it.

*Elizabeth Koledo
Heaton Woods Residential Care Home
Montpelier, Vermont*