Office of the State Long Term Care Ombudsman

Study of the Long Term Care Ombudsman Program (LTCOP)

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New York State Office for the Aging (NYSOFA)

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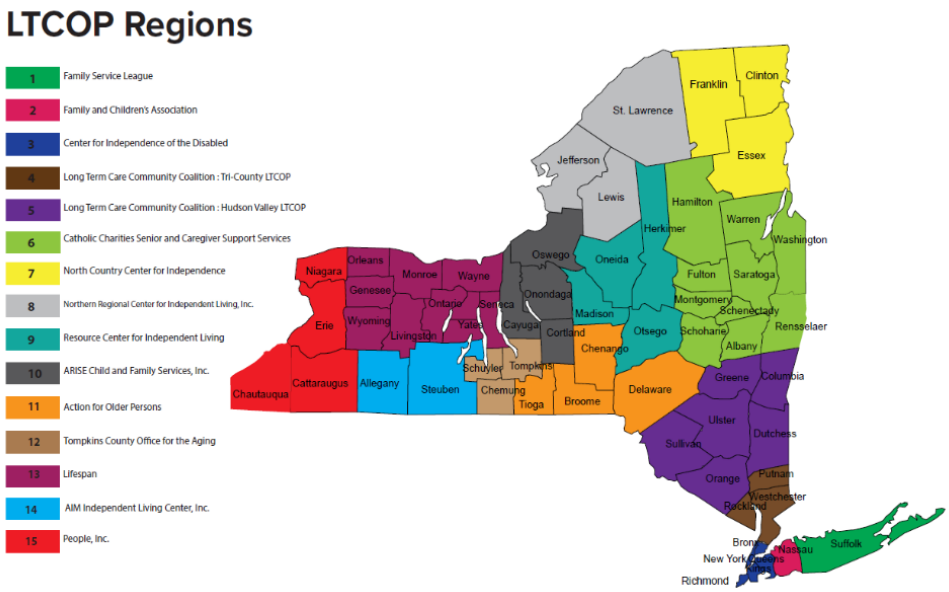
Background:

The New York State Office for the Aging (NYSOFA) administratively houses the Office of the State Long Term Care Ombudsman, the federal long-term care ombudsman program (LTCOP). Under the Federal Older Americans Act and its regulations (42 USC §3058g and 45 CFR Part 1324), every state is required to operate an independent Office of the State Long Term Care Ombudsman that addresses complaints and advocates for improvements in the long-term care system. In New York, LTCOP is further governed by the provisions of New York State Elder Law and its regulations (Elder Law Section 218 and 9 NYCRR Part 6660).

LTCOP is required under the New York State Elder Law to provide residents access to an Ombudsman in all long-term care facilities, which include skilled nursing facilities, adult care facilities, and family type homes in New York. Currently, the number of facilities is close to 1,400. Ombudsmen provide information and assistance to long-term care residents and their families to protect residents' rights and attain quality care. Through a federally required 36-hour certification, Ombudsmen are trained to identify, investigate, and resolve complaints brought forth by residents and their loved ones.

Administrative Structure and Management of LTCOP:

The LTCOP State Office is responsible for the overall program operations across the state. It has a State Ombudsman, a Senior Assistant State Ombudsman (SASO), and three Assistant State Ombudsmen (ASOs) who develop and implement all policies and procedures, supervise, and provide technical assistance to the 15 regional programs.



Each of the three ASOs is assigned five regional programs to supervise. This supervision includes weekly calls with the programs to discuss program operations, such as staffing issues, volunteer management, case and complaint handling and assistance, and budget status. Data audits are completed quarterly with each region to review volunteer participation, cases and complaints, and facility coverage. The State Office also conducts an onsite comprehensive annual program assessment that reviews all contractual requirements and overall program management. This assessment process addresses any concerns with

program operations as well as recommendations for improvement or required modifications to ensure compliance.

LTCOP's 15 regional programs are housed within 14 not-for-profit organizations and one Area Agency on Aging. The programs each have a full-time designated regional coordinator who is responsible for overall program management in the assigned region, and are assisted by support staff. The regional Ombudsman programs recruit, train and supervise a corps of volunteers whose primary responsibility is to provide a regular presence in nursing homes, adult care facilities and family type homes. Across the state, there are approximately 40 full-time regional LTCOP staff, 25 part-time staff, and 215 volunteers.

Ombudsmen Training Requirements:

All Ombudsmen are required to complete an initial certification training. Historically, only two certification trainings were offered per year in each regional program – a frequency which made it difficult to engage with potential volunteers and keep them interested until an upcoming training session was made available. This schedule also impacted staff onboarding, as staff could not perform the roles and responsibilities of an Ombudsman until they completed the training to become certified. The trainings were also not uniform across the state. Each region had to follow a guideline of required materials but was able to choose from a library of materials and have guest speakers, leading to inconsistencies in the expectations of the role.

During 2019 and 2020, the Federal Administration for Community Living (ACL) informed states of new standards for certification training requirements (effective October 1, 2021), which provided an opportunity to re-evaluate the current certification structure and improve upon it. To conform with ACL's timeline, a new certification training was created and implemented beginning in October 2021. This new training is now uniform across the state and has a detailed trainer and trainee manual, ensuring that each region provides all new Ombudsmen with standardized information to effectively perform their role. This training is offered in-person, virtually, or in hybrid format. This structure allows for coordination with multiple regional programs who may likewise have individuals waiting to be trained, giving regions more flexibility in the frequency of available training opportunities.

When it introduced the new certification training standards, ACL also increased the requirements for continuing education of Ombudsmen, formalizing a standard that all Ombudsmen must complete 18 hours of continuing education each program year. Prior to this new standard, programs in New York were only required to complete six in-service trainings per year, generally equating to a total of 10 to 12 hours. This was a significant change impacting New York, adding to existing challenges, as many volunteers did not meet the requirement even before this change. Volunteers have expressed that the requirements for continuing education, as well as other areas such as paperwork, are often the reason for them leaving the program or not following through to become an Ombudsman in the first place.

Ombudsman Roles and Responsibilities:

The overall role of Ombudsmen is to provide advocacy services to residents of long-term care facilities. This is ideally done through regular visits to facilities where the residents and their loved ones become familiar with the Ombudsman and a trusting relationship can be fostered.

During these visits, Ombudsmen have a variety of responsibilities. They provide information about the services that can be provided by an Ombudsman to residents; they attend resident council or family council meetings when invited; and they are involved in the New York State Department of Health (DOH) Survey process. Their primary role during visits is to investigate complaints brought forth by residents and/or their representatives, working with facilities to come to a resolution that meets the resident's expectation. When an Ombudsman cannot come to a resolution with the facility and there are quality-of-care concerns, Ombudsmen file a formal complaint with DOH, which is done in collaboration with the resident and/or their representative.

Often these types of complaints can be very complex and require many hours of time to resolve, especially with facility-initiated discharges. A facility-initiated discharge is when a facility issues a discharge notice to a resident, and the resident was not requesting or expecting to be discharged. There are six reasons a facility can initiate a discharge; however, the most frequent reasons requiring LTCOP involvement revolve around a facility stating that a resident no longer needs a skilled level of care, or for the resident's non-payment of an outstanding bill. When an Ombudsman is working with a resident facing eviction, they support the resident throughout the process, beginning with how to appeal the discharge, guidance on obtaining legal counsel, if necessary, and attending the discharge hearing if the resident requests an Ombudsman's presence.

Outside of facility visitation, paid Ombudsmen fulfill many other duties. Regional offices receive calls from many sources with questions about residents' rights, facility regulations, discharge issues, and the intricacies of long-term care. While Ombudsmen are responsible for working only with residents and families in facilities, they are expected to be knowledgeable of services and resources in the community for the area they serve. For example, individuals calling the program may ask about what to consider when choosing a facility, what home care services are available for someone to avoid permanent placement in a facility, how to qualify and apply for Medicaid, or what legal resources are available. Ombudsmen offer community education presentations to provide the public with resources and tools for navigating long-term care. They also attend local events to ensure the public is aware of the services provided by LTCOP and how to access these services.

Using the State LTCOP-approved data system, regional programs are responsible for ensuring they document all cases, complaints, and program activities, which include facility visits, instances of information and assistance, work with resident and family councils, survey participation, trainings for facility staff, and community education events. The State

Ombudsman is ultimately responsible for ensuring proper documentation and reporting the statewide program data to ACL each year.

As advocates for residents, Ombudsmen are also charged with representing residents' interests with legislative representatives. Both the State Office and regional programs meet with legislators to inform them of issues impacting the care of residents and engage in systems advocacy efforts to improve the quality of life and quality of care for residents.

Ombudsmen also work with law enforcement entities such as the State Attorney's General Office, the New York State Office of the Medicaid Inspector General, and the U.S. Attorney General's Office as it relates to resident care. When these agencies are involved in an investigation of a facility, the agencies often reach out to LTCOP to discuss the program's direct observations and experience with the facility as a whole.

LTCOP must also interface with DOH, as it is the oversight and licensing entity for facilities. For instance, the State Office staff participate in the Informal Dispute Resolution (IDR) process where facilities receiving deficiencies request a review from a panel as to whether the deficiency should be reduced or removed based on the evidence a facility provides. This process requires intensive preparation to participate on the panel discussions. Regional program representatives also participate in the facility survey process. DOH notifies the regional LTCOP program when DOH is onsite at a facility for a survey visit and the Ombudsman often attends the exit survey.

The New York State Legislature recently passed legislation to strengthen the relationship between LTCOP and DOH. The State Ombudsman Office now submits recommendations to the Public Health and Health Planning Council regarding the approval of Certificate of Need Applications for ownership of nursing homes. A dedicated DOH online complaint form and hotline number have also been created for use by LTCOP representatives only.

Ombudsman Facility Coverage:

Across the state, there are approximately 1,400 facilities with over 160,000 resident beds in nursing homes, adult care facilities, and family type homes.

ACL defines routine access as a facility receiving at least one visit in each quarter. By this standard, in Federal Fiscal Year (FFY) 2019, LTCOP provided routine access in 63 percent of nursing homes and 33 percent of adult care facilities and family type homes combined. Due to the COVID-19 pandemic and the implementation of visitation restrictions, no facilities received routine access in FFY 2020 and FFY 2021 (although there were facilities visited). Since the pandemic began, FFY 2022 is the first year with no visitation restrictions. In that year, only 31 percent of nursing homes and less than two percent of adult care facilities and family type homes combined had routine access. This was due to staffing turnover, loss of volunteers, and

volunteers being fearful to return to facility visitation given that many are also vulnerable to illness.

From pre-COVID to the present (FFY 2019 and FFY 2022), there has been a significant decline in coverage, evidenced by a 51 percent decrease in routine access in nursing homes and a 96 percent decrease in adult care facilities and family type homes combined.

Several factors have caused this decline in facility visitation. From the start of the pandemic, the majority of regions have experienced staffing changes. Any time there is a staffing change, it takes several months to fully onboard a new employee, due to certification procedures and a learning curve. Of note, seven of the 15 regions have experienced turnover in the regional coordinator, a significant position that is responsible for the overall management of the program. When this position changes, the staff and volunteers encounter a time period when the direction and supervision of the program are not as strong. The causes for staff leaving have varied; however, most staff cited the demands of the role and low pay as primary reasons.

Ombudsman Volunteers:

LTCOP was designed to utilize volunteers to meet program objectives. Over the past several years, the program has experienced a steady decline in the number of volunteers. COVID-19 significantly sped up that trend, further limiting the ability of Ombudsmen to be a regular presence in the facilities that LTCOP is required to cover. It is of note that volunteers for LTCOP have declined nationally.

Since 2016, the number of volunteers has declined 71 percent – from 730 to 215 volunteers – and the hours of service provided by volunteers has declined 61 percent. Conversely, the number of complaints received by LTCOP has increased by 430 percent during the same time period.

Recognizing the need for an increase in volunteers, LTCOP and NYSOFA have developed and continue to run an advertising campaign that began in the fall of 2021. It focuses on two areas: volunteer recruitment and program awareness. The campaign was very successful in its reach, well exceeding industry average metrics for reach and engagement. In response to the campaign, over 400 individuals contacted LTCOP to state their interest in becoming a volunteer; however, after learning more about the program – specifically, the Ombudsman roles, responsibilities, and time commitment – fewer than 40 of these individuals have taken the next steps needed to become a certified volunteer.

Before the pandemic, volunteers would often cite the demands of the program as being difficult to meet. Volunteers are expected to perform the same duties as paid staff when visiting facilities – all within a service commitment of 2 to 4 hours of services each week. Volunteers come from many backgrounds with different skill sets, which can make the management of

complex cases difficult, especially those cases that often require frequent follow up or ongoing assistance. Volunteers are also responsible for completing paperwork, documenting the program activities, and completing 18 hours of continuing education.

COVID-19 Pandemic Impact:

The COVID-19 pandemic has had lasting effects on the program. During the pandemic, Ombudsmen changed the methods by which they managed inquires to be via telephone, email or virtually, which had a negative impact on residents. There is no substitute for in-person interaction with the vulnerable population served. With the decline in volunteers and the loss of staff, several regions have had to continue to manage their programs through alternate means of communication as they do not have the capacity to visit the facilities as frequently. By handling issues off site, they can provide support to more residents in more facilities than they could through in-person visits.

Volunteers have left the program due to the fear of illness, and not wanting to enter facilities. Many volunteers are older themselves and therefore are at a high risk for contracting COVID-19 or other illnesses. Some volunteers also take care of their loved ones at home and do not want to risk bringing illness back to them.

Over the past two years, other states have been able to respond to the impact of the pandemic on this important program. For example, New Jersey has double their paid ombudsmen staff. This has allowed their volunteers to have fewer requirements and more complex cases are handled by the paid team for further investigation and resolution.

Connecticut and Ohio both have moved forward with paid ombudsperson staffing models. In Connecticut, volunteers provide a supportive role while staff handle those more complicated cases. Further, Ohio, a state which is similar in size to New York in terms of facilities and resident census, has designated state funds for their ombudsman program.

Conclusion:

LTCOP is a valuable program assisting and advocating for and on behalf of residents of facilities and their families and ensuring quality of care.

The model that the program was developed around is the use of volunteers, which has shown to not be sustainable. LTCOP is complex and it would be extremely beneficial to have paid employees throughout the state serving as Ombudsmen to ensure residents are better supported and all mandates are fulfilled.