

**Testimony of  
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New York State Office for the Aging**



**Long Term Care Ombudsman Program Hearing  
Conducted By the  
Assembly Standing Committee on Aging  
Thursday, March 2, 2023**

Greetings Chairperson Kim, and distinguished members of the Assembly Standing Committee on Aging. I am Claudette Royal, the New York State Ombudsman. I'm honored to testify today regarding the state of the Long Term Care Ombudsman Program (LTCOP).

LTCOP is a federally mandated program responsible for addressing complaints and advocating for improvements in the long-term care system pursuant to the federal Older Americans Act (OAA) and its regulations (42 USC §3058g and 45 CFR Part 1324). In New York, LTCOP is administratively housed within the New York State Office for the Aging (NYSOFA); however, the program functions independently, per the OAA and its regulations. 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).

Under this governing structure, LTCOP is required to provide services to all 160,000 residents in the state's 1,400 skilled nursing facilities (SNFs), adult care facilities (ACFs), and family type homes (FTBs).

LTCOP is administered by state office staff and regional programs across the state. The state office is comprised of 5 full time staff, and a half-time legal counsel who collectively are responsible for the facilitation and supervision of all program operations, development of policies and procedures, and program adherence to these policies.

LTCOP's 15 regional programs are housed within 14 not-for-profit organizations and one Area Agency on Aging to carry out the duties of the program under the state office's direction. Each region must have a regional coordinator who is responsible for the overall program management, along with support staff. Currently the regional programs have approximately 40 full-time and 25 part-time paid staff, and 215 volunteers statewide.

### **Ombudsman Training Requirements**

All Ombudsmen are required to be certified and to meet the FFY2021 Administration on Community Living's (ACL) standards for certification training as well as yearly continuing education.

Certification training includes:

- A minimum of 36 hours, including classroom and in-facility components.
- For FFY 2021, LTCOP developed a new standardized certification training which can be provided in-person, virtual, or in a hybrid model, by multiple regions simultaneously.

Continuing education includes:

- 18 hours per year for all Ombudsmen.

### **Ombudsman Role and Responsibilities**

The overall role of an Ombudsman is to provide advocacy services to residents in long-term care facilities. Primarily, this is accomplished through facility visitation. There is no federal or state requirement establishing the frequency of visits – only that resident's should have regular, timely, private, and unimpeded access to an Ombudsman.

At the federal level, ACL requires programs to report on the number of facilities that received “routine access,” one or more visits, and the total number of visits. “Routine access” is defined as a facility receiving at least one visit each quarter of the reporting year (October 1 to September 30).

In New York, the expectation is a “regular presence” which provides the best avenue to allow the ombudsmen to accomplish their important work. A “regular presence” allows for Ombudsmen to:

- Make a connection with residents, develop trusting relationships, and promote advocacy on a resident’s behalf.
- Foster a working relationship with facility staff and increase the ability to resolve resident concerns effectively.
- Observe systemic changes or patterns in a facility that may be having an impact on resident care (such as staffing, food quality, or response times to resident needs), thereby increasing the likelihood for facilitating positive changes.

The oversight role of LTCOP is often misunderstood. We are not regulators, nor do we have enforcement authority, as this is the role of New York State’s Department of Health (DOH). The work of the LTCOP is as follows:

- LTCOP focuses on regulatory requirements and resident preferences, given that not all resident complaints are necessarily regulatory in nature.
- LTCOP works with a facility to improve quality of life for residents, addressing such matters as changes in activity schedules, individual customary routines, or addressing menu choices. These issues may not necessarily rise to the level of a regulatory deficiency, but they have a great impact on psychosocial wellbeing.
- LTCOP works with a facility to resolve issues to improve care in a facility before there is a need for regulatory intervention. These resolutions can decrease the number of complaints needing to be filed with DOH.
- For those concerns that may be regulatory in nature and are unable to be resolved between an Ombudsman and the facility, LTCOP makes a referral to DOH, with resident permission, as applicable.

Though some complaints may seem relatively easy to resolve, many are not, including facility-initiated or involuntary discharges. Federal and state regulations both require LTCOP to receive these discharge notices from nursing homes. When a resident receives a discharge notice, time is of the essence and resolution could take weeks, sometimes requiring daily follow up. Extensive knowledge of related rules and regulations is necessary to navigate the complex nature of these complaints, often requiring intervention from paid staff to support the volunteers.

### **Ombudsman Volunteers and Staff**

New York is one of a few states in the country that utilize volunteers to fulfill the full role of an Ombudsman. Most states have volunteers but those are in addition to paid staff. A further

difference is that the expectations of volunteers in New York is the same as paid staff. Both paid staff and volunteers visit residents, make observations, speak with facility staff about concerns raised. They are expected to fully investigate complaints, including follow up as needed, and to document them. In other states, volunteers do conduct facility visits; however, most of the complaint handling is done by paid staff.

Volunteer numbers in most service areas and regions of the state have been on the decline for decades. LTCOP is no different. Further exacerbating this trend, the COVID-19 pandemic had a significant impact on volunteerism for LTCOP. Specifically in New York, the number of volunteers has declined over 70% from FFY 2016 to the end of FFY 2022. The number of service hours provided by these volunteers has also declined over 60%, yet the number of complaints has increased over 400%.

As evidenced in other states, relying on paid staff allows for volunteers to perform a less demanding role -- and more of a support role. When volunteers depart the program, a facility is often left without an assigned Ombudsman, putting this responsibility on paid staff.

### **Facility Coverage**

Facility visitation is the most efficient and effective way to provide residents with Ombudsman access. In FFY 2019, LTCOP provided routine access to 63% of SNFs and 33% of ACFs and FTHs combined. In FFY 2022, these numbers were 33% and 16%, respectively.

Facility visitation impacts LTCOP's ability to meet the expectation of recent legislative efforts for improving resident care in facilities. One example is the requirement for LTCOP to provide recommendations to the Public Health and Health Planning Council, a DOH advisory body, regarding Certificate of Need applications for nursing home ownership. There may be multiple facilities affiliated with the proposed owners. It is challenging for LTCOP to provide meaningful comments if these facilities have not had many or any recent visits.

### **Conclusion**

New York took a positive step forward in the enacted FY 2023 State Budget by including an additional \$2.5 million to the LTCOP budget. Those funds allowed regional programs to hire additional staff. Governor Hochul's SFY 2024 Proposed Executive State Budget maintains and baselines that critical investment.

Across the spectrum, long term care is facing unprecedented challenges. The Governor's initiatives and others, like the Reimagining Long Term Care Task Force and the Master Plan for Aging, will address some of these challenges. I look forward to participating in these important discussions.

Thank you. I appreciate the opportunity to be here, and I am happy to answer any questions.