

THOMAS P. DiNAPOLI
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 31, 2020

Greg Olsen
Acting Director
New York State Office for the Aging
2 Empire State Plaza, 5th Floor
Albany, NY 12223

Re: Long-Term Care Ombudsman
Program
Report 2020-F-27

Dear Mr. Olsen:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the New York State Office for the Aging (NYSOFA) to implement the recommendations contained in our audit report *Long-Term Care Ombudsman Program* (Report [2018-S-48](#)).

Background, Scope, and Objective

Under the federal Older Americans Act of 1965 (Act), last reauthorized in 2016, each state is required to establish an Office of the State Long-Term Care (LTC) Ombudsman. In New York, this office (hereafter referred to as the Office) is administratively housed within NYSOFA, which is headed by a State Ombudsman and staffed by one Senior Assistant State Ombudsman and three Assistant State Ombudsmen. The Office's mission is to serve as an advocate and resource for both older adults and persons with disabilities who live in LTC facilities, such as nursing homes, assisted living, and board and care homes. According to NYSOFA, about 1,500 facilities in the State, housing more than 160,000 residents, have a need for ombudsman services.

The Office's responsibilities include ensuring that residents have regular, timely, private, and unimpeded access to ombudsman services; identifying, investigating, and resolving complaints made by or on behalf of residents in a timely manner; establishing procedures for training authorized representatives and local ombudsmen and their staff; and systems advocacy, including analyzing and monitoring laws and regulations that relate to LTC facilities and submitting an annual report that covers the progress and problems in providing services. Although ombudsmen may be volunteers or paid staff, the Office relies heavily on a corps of trained and certified citizen-volunteer ombudsmen to visit facilities, establish relationships with residents, and respond to complaints.

The Office reports certain information, such as the number of complaints received and resolved, annually to the federal Administration for Community Living's National Ombudsman Reporting System. According to Office officials, as of September 30, 2019, there were about

477 ombudsmen, including 432 volunteers and 45 paid full-time equivalent staff (about 40 at the regional programs and 5 at the State office). Together, they spent a total of 66,740 hours working with residents during the previous year and, in doing so, identified 4,880 complaints. For the three-year period ending September 30, 2020, the Office received nearly \$12 million in funding, including \$7.6 million in federal funds, \$3.6 million in State funds, and \$750,000 from localities.

Our initial audit report, issued October 3, 2019, sought to determine whether NYSOFA's LTC Ombudsman Program was carrying out its responsibilities under the law, including adequately advocating for the needs of the people it's intended to serve. The audit covered the period October 1, 2015 to January 30, 2019. We found that certain system-generated Office data may not have been sufficiently reliable for NYSOFA's use for analysis at the facility, regional program, or complaint level, which may have limited its usefulness in decision-making. Furthermore, we found that many residents of LTC facilities in the State lack regular access to ombudsman services, due in part to a decline in the number of volunteers combined with a lack of paid regional program staff. Specifically, 11 of the 15 regional programs fell short of the recommended minimum number of staff for the federal fiscal year (FFY) ending September 30, 2018.

In addition, many facilities were not visited quarterly by an ombudsman, as recommended, leaving residents and their families without a reliable, regular avenue for voicing concerns, and about 30 percent of facilities were not visited by an ombudsman at all during the FFY ending September 30, 2018, leaving residents with reduced access to these important services. We also found that many volunteers were not meeting training requirements. Finally, the Office could benefit from developing a long-term systems advocacy plan that is informed by reliable data.

The objective of our follow-up review was to assess the extent of implementation, as of December 9, 2020, of the five recommendations from our initial audit report.

Summary Conclusions and Status of Audit Recommendations

NYSOFA has made significant progress in addressing the problems we identified in the initial report, and has implemented all five of the recommendations.

Follow-Up Observations

Recommendation 1

Improve the reliability of system-generated Office data. Steps could include implementing ways to prevent and detect input errors and incomplete or blank fields, such as those identified in this report, and working with the system vendor to address unresolved issues.

Status – Implemented

Agency Action – Since our initial audit, the Office has taken actions to improve the reliability of its system-generated Office data. In response to our audit, the Office worked with the system vendor and implemented additional data validation protocols within its system to minimize data entry errors and eliminate incomplete or blank fields. For example, case details, facility name, complainant name, and resident name are now required fields, and the date a case is closed cannot be before the date of first contact with the complainant. In addition, the Office has made significant changes to the complaint handling process,

in part to improve data quality and minimize data entry errors. Whereas volunteers were previously responsible for selecting the correct disposition code and verification status on the complaints they handled, the responsibility for coding complaints has been shifted to paid staff. Volunteers now focus on identifying and capturing resident problems and concerns, and paid staff are responsible for coding. Office officials said they believe these new procedures will lead to improved data reliability.

Recommendation 2

Take steps to identify and understand reasons for the decline in volunteers and differences in regional program results. Steps could include surveys of regional practices, exit interviews with volunteers, and efforts to identify best practices in other states.

Status – Implemented

Agency Action – Following our audit, the Office conducted a survey of volunteers to gain insight into the reason for the decline in volunteers. The survey included questions about volunteers' motivations and interests in the program and their overall experience. It also solicited specific feedback about how the program and volunteer experience could be improved in areas such as training, support, supervision, duties and responsibilities assigned to volunteers, and Office policies and procedures. The Office continues to assess and discuss with regional program staff the information from evaluations that staff obtain from volunteers who leave the program.

The Office continues to participate in regular calls through the National Association of State Ombudsman Programs (NASOP) and the National Ombudsman Resource Center (NORC), including monthly NASOP membership meetings and bi-weekly calls with other state ombudsmen through the NORC. During these calls, members are updated on changes to relevant laws, rules, and regulations; and share experiences, challenges, and best practices associated with their position as LTC ombudsmen.

Recommendation 3

Based on the above results, develop and implement strategies to improve access to ombudsman services, including access to volunteer ombudsmen.

Status – Implemented

Agency Action – The results of the survey of volunteers indicated that volunteers' primary concern was compliance with documentation requirements. As a result, the Office made significant changes to their complaint handling process to lessen the burden on volunteers, and provided training to each regional office on this new process. As described above, volunteers now focus on capturing residents' problems and concerns when documenting a complaint, while paid staff are responsible for coding. Further, when either a resident or an individual calls the program with an issue, the regional program staff now open the complaint at the time of the call. Previously, the Office would inform the appropriate volunteer of the call and ask them to look into it, without gathering important details and opening a case in the system. This prior notification enables staff and volunteers to be more informed when addressing identified concerns and also allows staff to provide feedback and suggestions to the volunteer on how to proceed, which helps to develop volunteers' ombudsman skills. Office officials said that during the ongoing coronavirus pandemic, they have continued to provide residents with

access to the program through virtual visits and by phone, email, and videoconferencing technologies. As of December 2020, a small number of paid staff ombudsmen have resumed in-person visits.

The Office has also developed a statewide marketing plan – currently in draft form due primarily to conditions associated with the ongoing pandemic – to help raise awareness of the program among residents and caregivers, and to increase the number of program volunteers.

Recommendation 4

Strengthen efforts to ensure that volunteer ombudsmen receive required annual training.

Status – Implemented

Agency Action – Since our initial audit, the Office has worked with regional programs to provide increased opportunity and flexibility for volunteers to complete required annual training. Before, training was primarily offered in person; now, volunteers have the option to take web-based trainings offered by the Office, regional programs, and others – such as the NORC – to meet their annual training requirement. The Office’s annual assessment of regional programs continues to include an evaluation of compliance with annual training requirements.

Recommendation 5

Develop a long-term systems advocacy plan that is informed by reliable Office data and that identifies key advocacy goals and activities.

Status – Implemented

Agency Action – In late 2018, the Office created a task force to address the top area of complaints, which, according to the Office’s FFY 2019 data, is discharge, transfer, and eviction. The task force includes Disability Rights NY, Empire Justice, Long Term Care Community Coalition, Center for Elder Law and Justice, as well as staff from the regional programs, and meets regularly to discuss and advocate for improved quality of care related to discharge, transfer, and eviction.

In addition, Office officials stated that they expect the changes to the complaint-handling process will improve the reliability of complaint data and enable them to more effectively use it to develop an informed systems advocacy agenda.

Major contributors to this report were Andrea LaBarge, Christi Duncan, Zachary Barach, Haroon Sarwer, and Lisa Whaley.

We thank NYSOFA management and staff for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Sharon L. Salembier, CPA, CFE
Audit Manager

cc: Karen Jackuback, Deputy Director of Finance and Administration
Claudette Royal, New York State Long-Term Care Ombudsman