

STATE OF NEW YORK

1955

2023-2024 Regular Sessions

IN ASSEMBLY

January 23, 2023

Introduced by M. of A. ZINERMAN, BURDICK -- read once and referred to the Committee on Aging

AN ACT to amend the elder law, in relation to creating the district long-term care ombudsman council program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subparagraph 1 of paragraph (e) of subdivision 1 of section
2 218 of the elder law, as added by chapter 259 of the laws of 2018, is
3 amended, and a new paragraph (i) is added to read as follows:

4 (1) is an employee or volunteer of the state office for the aging or
5 of a designated local ombudsman entity, or a member of a district long-
6 term care ombudsman council program and represents the state long-term
7 care ombudsman program;

8 (i) "District council" or "district council program" shall mean the
9 district long-term care ombudsman council program established in subdi-
10 vision four of this section.

11 § 2. The opening paragraph and subparagraph 7 of paragraph (d) of
12 subdivision 3 of section 218 of the elder law, as amended by chapter 259
13 of the laws of 2018, are amended to read as follows:

14 The state ombudsman, personally or through [~~authorized represen-~~
15 ~~tatives~~] the district long-term care ombudsman council program estab-
16 lished in subdivision four of this section, shall:

17 (7) develop a certification training program and continuing education
18 for ombudsmen which at a minimum shall specify the minimum hours of
19 training, the annual number of hours of in-service training, and the
20 content of the training, including, but not limited to, training relat-
21 ing to federal, state, and local laws, regulations, and policies with
22 respect to long-term care facilities in the state, investigative and
23 resolution techniques, and such other training-related matters as the
24 state ombudsman determines to be appropriate, for the purposes of train-
25 ing members of the district long-term care ombudsman council program

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 described in subdivision four of this section, such training shall also
2 include an overview of such program;

3 § 3. Subdivision 4 of section 218 of the elder law, as amended by
4 chapter 259 of the laws of 2018, is amended to read as follows:

5 4. Local long-term care ombudsman program and district long-term
6 ombudsman council program. (a) The state ombudsman, in accordance with
7 applicable state contracting procedures, ~~[may]~~ shall designate an entity
8 to operate a local long-term care ombudsman program for ~~[one or more~~
9 ~~counties]~~ each assembly district, and shall monitor the performance of
10 each such entity. If the state office for the aging is aware or becomes
11 aware of any evidence that the designation of an entity to operate a
12 long-term care ombudsman program by the state long-term care ombudsman
13 would result in legal concerns or liability for the state office for the
14 aging or office of the state long-term care ombudsman, the state ombuds-
15 man will comply with the state office for the aging's determination that
16 such designation should not be made.

17 (b) The designated entity shall be an area agency on aging, a public
18 agency or a private not-for-profit corporation which is free from any
19 conflict of interest that cannot be remedied. Any actual and potential
20 conflicts of interest shall be identified and addressed in accordance
21 with subdivision ten of this section.

22 (b-1) The state ombudsman shall create, in each assembly district, a
23 district long-term care ombudsman council program to coordinate the
24 volunteers of each local long-term care ombudsman program within their
25 district. Each district council shall consist of the following members:

26 (i) a trained district coordinator, appointed by the state ombudsman,
27 to serve as chair, who shall be paid an annual stipend of two hundred
28 dollars;

29 (ii) a trained district coordinator to serve as co-chair, appointed by
30 the state ombudsman, who shall be paid an annual stipend of one hundred
31 fifty dollars;

32 (iii) a trained district coordinator, appointed by the state ombuds-
33 man, to serve as secretary, who shall be paid an annual stipend of one
34 hundred fifty dollars; and

35 (iv) eight or more residents of such district, approved by the chair,
36 co-chair, and secretary of the district council, to serve as trained
37 district advocates, each of whom shall be paid an annual stipend of one
38 hundred fifty dollars.

39 (b-2) The positions of long-term care ombudsman program volunteer and
40 district long-term care ombudsman council program advocate shall be
41 listed with the human resources departments of the department of health,
42 state office of the aging, and any other relevant agency. Such listing
43 shall be included on each such agency's website and marketing materials,
44 and such listing shall be displayed on the department of labor website
45 and in state run care facilities.

46 (b-3) Information about the role and responsibility of the district
47 council program and the contact information of the members of such
48 district council program providing services to a long-term care facility
49 shall be included in the welcome packet of all new residents to such
50 facility alongside the patient bill of rights.

51 (c)(1) Each local long-term care ombudsman program shall be directed
52 by a qualified individual who is employed and paid by the local entity
53 and who shall have the duties and responsibilities as provided in regu-
54 lations, consistent with the provisions of this section and of Title VII
55 of the federal older Americans act of 1965, as amended. Such director
56 shall work with the district council to carry-out the requirements of

1 this section. In addition, upon designation, the entity is responsible
2 for providing for adequate and qualified staff, which may include
3 trained volunteers to perform the functions of the local long-term care
4 ombudsman program.

5 (2) No local program staff or district council staff, including the
6 supervisor and any volunteers, shall perform or carry out the activities
7 on behalf of the state long-term care ombudsman program or the district
8 long-term ombudsman council program unless such staff has been verified
9 as completing the training program developed by the state ombudsman and
10 has been approved by the state ombudsman as qualified to carry out the
11 activities on behalf of the local program or district council program.

12 (3) For purposes of the district council such trainings shall be given
13 annually for all new recruits to such program and shall be available in
14 both in-person and online formats. Each council member shall also be
15 required to complete two or more professional development trainings
16 annually. Such professional development trainings shall be developed by
17 the state ombudsman.

18 (d) When the state ombudsman determines that a local long-term care
19 ombudsman program does not meet the standards set forth in this section
20 and in any related regulations, the state ombudsman, in coordination
21 with the state office for the aging, may refuse, suspend, or remove the
22 designation of the local [~~ombudsmen~~] ombudsman entity. Prior to taking
23 such action, the state ombudsman shall send to the affected local
24 program a notice of the state ombudsman's intentions to refuse, suspend,
25 or remove the designation; provided, however, if the state office for
26 the aging is aware or becomes aware of evidence that the designation or
27 continued designation of an entity to operate a long-term care ombudsman
28 program would result in legal concerns or liability for the state office
29 for the aging or the office of the state long-term care ombudsman, the
30 state ombudsman will comply with the state office for the aging's deter-
31 mination that such designation should not be made or that such desig-
32 nation be refused, suspended, or removed.

33 (e) The state ombudsman shall develop a grievance process to offer an
34 opportunity for reconsideration of any decision to refuse, suspend, or
35 remove the designation of a local ombudsman entity. Notwithstanding the
36 grievance process, the state ombudsman shall make the final determi-
37 nation to designate or to refuse, suspend, or remove the designation of
38 a local ombudsman entity; provided, however, if the state office for the
39 aging is aware or becomes aware of any evidence that the designation of
40 an entity to operate a long-term care ombudsman program by the state
41 long-term care ombudsman or that the failure of the state ombudsman to
42 refuse, suspend, or remove the designation of a local ombudsman entity
43 would result in legal concerns or liability for the state office for the
44 aging or the office of the state long-term care ombudsman, the state
45 ombudsman will comply with the state office for the aging's determi-
46 nation that such designation should not be made or that such designation
47 be refused, suspended, or removed.

48 (f) Each district shall receive the sum of eight hundred ten thousand
49 dollars annually for the purposes of administrating the district long-
50 term care ombudsman council program.

51 § 4. Subdivision 14 of section 218 of the elder law, as amended by
52 chapter 776 of the laws of 2022, is amended to read as follows:

53 14. Annual report. (a) On or before March thirty-first, two thousand
54 five, and annually thereafter, the state ombudsman shall submit to the
55 governor, commissioner of the federal administration on aging, speaker
56 of the assembly, temporary president of the senate, director of the

1 state office for the aging, commissioner of the department of health,
2 and the commissioner of children and family services a report and make
3 such report available to the public:

4 [~~(a)~~] (i) describing the activities carried out by the office of the
5 state long-term care ombudsman during the prior calendar year;

6 [~~(b)~~] (ii) containing and analyzing data relating to complaints and
7 conditions in long-term care facilities and to residents for the purpose
8 of identifying and resolving significant problems, including an examina-
9 tion of any recurring complaints to determine if there are systemic
10 issues in such facilities;

11 [~~(c)~~] (iii) evaluating the problems experienced by, and the complaints
12 made by or on behalf of, residents;

13 [~~(d)~~] (iv) containing recommendations for appropriate state legis-
14 lation, rules and regulations and other action based on data collected
15 pursuant to this section, concerns raised by residents and families of
16 residents, and observations made when visiting long-term care facili-
17 ties, to improve the quality of the care and life of the residents,
18 protecting the health, safety and welfare and rights of the residents
19 and resolving resident complaints and identified problems or barriers;

20 [~~(e)~~] (v) containing an analysis of the success of the long-term care
21 ombudsman program, including success in providing services to residents;

22 [~~(f)~~] (vi) describing barriers that prevent the optimal operation of
23 the ombudsman program;

24 [~~(g)~~] (vii) describing any organizational conflicts of interest in the
25 ombudsman program that have been identified and the steps taken to
26 remove or remedy such conflicts;

27 [~~(h)~~] (viii) containing all complaints received by the state ombudsman
28 relating to long-term care facilities including but not limited to
29 complaints that suggest the possible occurrence of physical abuse,
30 mistreatment, neglect or Medicaid fraud, listed by type of complaint,
31 facility name and by region;

32 [~~(i)~~] (ix) containing the number of visits to each long-term care
33 facility, listed by facility name and by region, and names of long-term
34 care facilities that did not receive any visits in the prior year; and

35 [~~(j)~~] (x) any other matters as the state ombudsman, in consultation
36 with the director of the state office for the aging, determines to be
37 appropriate.

38 (b) On or before March thirty-first, two thousand twenty-five, and
39 annually thereafter, each district long-term care ombudsman council
40 program shall submit to the attorney general a report and make such
41 report available to the public:

42 (i) describing the activities carried out by the district council
43 program during the prior calendar year;

44 (ii) containing and analyzing data relating to complaints and condi-
45 tions in long-term care facilities and to residents for the purpose of
46 identifying and resolving significant problems;

47 (iii) evaluating the problems experienced by, and the complaints made
48 by or on behalf of, residents;

49 (iv) containing recommendations for appropriate state legislation,
50 rules and regulations and other action to improve the quality of the
51 care and life of the residents, protecting the health, safety and
52 welfare and rights of the residents and resolving resident complaints
53 and identified problems or barriers;

54 (v) containing an analysis of the success of the district council
55 program, including success in providing services to residents;

1 (vi) describing barriers that prevent the optimal operation of the
2 district council program;

3 (vii) describing any organizational conflicts of interest in the
4 district council program that have been identified and the steps taken
5 to remove or remedy such conflicts;

6 (viii) any other matters as the district council determines to be
7 appropriate; and

8 (ix) in the cases of new nursing homes that are opening in a partic-
9 ular district under a different name or with ownership from a previous
10 facility that was closed or cited for issues by the department of
11 health, provide recommendations for the nursing home to be approved for
12 opening.

13 § 5. This act shall take effect on the one hundred eightieth day after
14 it shall have become a law. Effective immediately, the addition, amend-
15 ment and/or repeal of any rule or regulation necessary for the implemen-
16 tation of this act on its effective date are authorized to be made and
17 completed on or before such effective date.