

# STATE OF NEW YORK

886

2023-2024 Regular Sessions

## IN SENATE

January 9, 2023

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed 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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described in subdivision four of this section, such training shall also include an overview of such program;

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

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

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

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

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

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

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

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

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

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

(c)(1) Each local long-term care ombudsman program shall be directed by a qualified individual who is employed and paid by the local entity and who shall have the duties and responsibilities as provided in regulations, consistent with the provisions of this section and of Title VII of the federal older Americans act of 1965, as amended. Such director 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.