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:

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

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

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

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

The state ombudsman, personally or through [~~authorized representatives~~] **the district long-term care ombudsman council program established in subdivision four of this section,** shall:

(7) develop a certification training program and continuing education for ombudsmen which at a minimum shall specify the minimum hours of training, the annual number of hours of in-service training, and the content of the training, including, but not limited to, training relating to federal, state, and local laws, regulations, and policies with respect to long-term care facilities in the state, investigative and resolution techniques, and such other training-related matters as the state ombudsman determines to be appropriate**, for the purposes of training 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.

LBD03635-01-3

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

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

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

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

(d) When the state ombudsman determines that a local long-term care ombudsman program does not meet the standards set forth in this section and in any related regulations, the state ombudsman, in coordination with the state office for the aging, may refuse, suspend, or remove the designation of the local [~~ombudsmen~~] ombudsman entity. Prior to taking such action, the state ombudsman shall send to the affected local program a notice of the state ombudsman's intentions to refuse, suspend, or remove the designation; provided, however, if the state office for the aging is aware or becomes aware of evidence that the designation or continued designation of an entity to operate a long-term care ombudsman program would result in legal concerns or liability for the state office for the aging or the 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 or that such designation be refused, suspended, or removed.

(e) The state ombudsman shall develop a grievance process to offer an opportunity for reconsideration of any decision to refuse, suspend, or remove the designation of a local ombudsman entity. Notwithstanding the grievance process, the state ombudsman shall make the final determination to designate or to refuse, suspend, or remove the designation of a local ombudsman entity; provided, however, 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 or that the failure of the state ombudsman to refuse, suspend, or remove the designation of a local ombudsman entity would result in legal concerns or liability for the state office for the aging or the 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 or that such designation be refused, suspended, or removed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 5. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.