

Office for the Aging

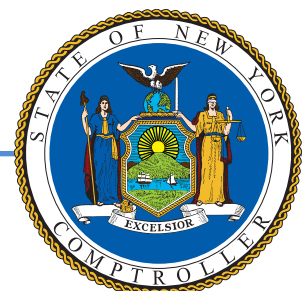
Long-Term Care Ombudsman Program

Report 2018-S-48 | October 2019

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine whether the New York State Office for the Aging's (NYSOFA) Long-Term Care (LTC) Ombudsman Program is carrying out its responsibilities under the law, including adequately advocating for the needs of the people it's intended to serve. Our audit covered the period October 1, 2015 to January 30, 2019.

About the Program

Under the federal Older Americans Act of 1965 (Act), to be eligible for certain federal grants, each state is required to establish an Office of the State Long-Term Care Ombudsman. In New York, this office (hereafter referred to as the Office) is administratively housed within NYSOFA. 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, there are about 1,500 facilities in the State, housing more than 160,000 residents who have a need for ombudsman services.

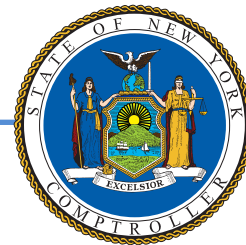
The Office's responsibilities include helping ensure that residents have regular, timely, private, and unimpeded access to ombudsman services; identifying, investigating, and resolving complaints made by or on behalf of residents in a timely manner; establishing procedures for training authorized representatives 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 progress and problems in providing services. Although ombudsmen may be paid staff or volunteers, the Office relies heavily on a large corps of trained volunteers to visit the approximately 1,500 LTC facilities in the State, establish relationships with residents, and respond to resident complaints.

Key Findings

- Certain system-generated Office data (complaint records, number of volunteers and paid staff, and number of LTC facilities and associated beds) may not be sufficiently reliable for NYSOFA's use for analysis at the facility, regional program, or complaint level, which may limit its usefulness in decision making.
- 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. As of January 2019, about 600 of the approximately 1,500 LTC facilities in the State – about 40 percent – have an assigned volunteer ombudsman, leaving the remaining 900 facilities to be covered by only 50 paid local staff, which is about half the recommended minimum number. Eleven of the 15 regional programs fell short of the recommended minimum number of staff for the federal fiscal year ending September 30, 2018, and about 30 percent of facilities were not visited by an ombudsman, leaving residents with reduced access to these important services.

Key Recommendations

- Improve the reliability of system-generated Office data by working with the existing vendor to address unresolved issues and by implementing ways to prevent and detect input errors.
- Take steps to identify and understand reasons for the decline in volunteers and differences in regional program results. Use the resulting information to develop and implement strategies to improve access to ombudsman services.



Office of the New York State Comptroller Division of State Government Accountability

October 3, 2019

Mr. Greg Olsen
Acting Director
New York State Office for the Aging
2 Empire State Plaza
Albany, NY 12223-1221

Dear Mr. Olsen:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Long-Term Care Ombudsman Program*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

Contents

Glossary of Terms	5
Background	6
Audit Findings and Recommendations	9
Reliability of Office Data	9
Access to Ombudsman Services	10
Other Matters	16
Recommendations.....	17
Audit Scope, Objective, and Methodology	19
Statutory Requirements	21
Authority.....	21
Reporting Requirements.....	21
Exhibit A	22
Exhibit B	23
Exhibit C	24
Agency Comments	25
Contributors to Report	27

Glossary of Terms

Abbreviation	Description	Identifier
ACL	Administration for Community Living	<i>Agency</i>
Act	Federal Older Americans Act of 1965	<i>Law</i>
FFY	Federal fiscal year	<i>Key Term</i>
FTE	Full-time equivalent	<i>Key Term</i>
Law	New York State Elder Law	<i>Law</i>
LTC	Long-term care	<i>Key Term</i>
NORC	National Long-Term Care Ombudsman Resource Center	<i>Agency</i>
NORS	National Ombudsman Reporting System	<i>System</i>
NYSOFA	New York State Office for the Aging	<i>Auditee</i>
Office	New York State Long-Term Care Ombudsman Program	<i>Key Term</i>

Background

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 the New York State Office for the Aging (NYSOFA), which is headed by a State Ombudsman and staffed by four 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. About 1,500 facilities in the State, housing more than 160,000 residents, have a need for ombudsman services.

The Act, along with provisions in the New York State Elder Law (Law) and related regulations, requires the Office to serve as a LTC facility resident advocate, which includes the following responsibilities:

- Identifying, investigating, and resolving complaints made by or on behalf of residents;
- Ensuring that residents have regular, timely, private, and unimpeded access to ombudsman services and that residents, and complainants who are acting on their behalf, receive prompt responses to complaints;
- Establishing procedures for training authorized representatives and local ombudsmen and their staff;
- Representing the interests of residents before government agencies and seeking administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;
- Engaging in systems advocacy efforts, including analyzing and monitoring federal, State, and local laws, regulations, and policies that relate to LTC facilities and services in the State; participating in the development and implementation of laws, regulations, and governmental policies that pertain to LTC facility resident care; and facilitating public comment and recommending changes to these laws, regulations, and policies; and
- Submitting annually by March 31, to the Governor and other designated officials, a report that includes information about the progress and problems in providing Office services. The report, which must be made available to the public, must include an analysis of data relating to complaints and conditions in facilities; evaluate the problems experienced by residents; describe any identified organizational conflicts of interest; and include recommendations for appropriate actions, such as changes to laws, rules, and regulations.

As a result of changes at the State level that took effect in the federal fiscal year (FFY) ending September 30, 2016, the Office was restructured from 31 local programs to 15 regional programs. The restructuring was intended to provide LTC residents with improved access to volunteers and to paid staff who could provide training and technical assistance to volunteers in each region. NYSOFA has contracts with 15 providers, which include 14 not-for-profit organizations and one county Office for the Aging (see Exhibit A), to provide Office services in their regions. Federal regulations issued in 2015 require that the relevant state agency (here, NYSOFA) either establish the LTC ombudsman office and program as a distinct entity located within or connected to the agency or arrange with another agency or not-for-profit organization to establish a distinct entity to carry out program functions. To meet the requirement, in 2016, NYSOFA designated the Office a distinct and separate entity within the agency. Further changes enacted in 2018 brought the Law into conformity with changes in federal law and regulations regarding LTC ombudsmen.

Office procedures require regional programs to submit a work plan every two years that addresses their goals and objectives. These goals include areas such as providing regular in-person access; increasing the number and retention of certified volunteers; ensuring competency through ongoing training and group discussions; reporting data in a timely and accurate manner to ensure its optimal use; and promoting quality care and resident empowerment through effective systems advocacy.

Although ombudsmen may be volunteers or paid staff, the Office relies heavily on a corps of trained and certified citizen-volunteer ombudsmen to visit the LTC facilities and make contact with their residents, also referred to as clients. Each regional program has a full-time, paid Ombudsman Coordinator who recruits, trains, and supervises its volunteers. Contract terms require regional programs to follow Office policy, which in turn requires that they check the Division of Criminal Justice Services Sex Offender Registry as part of the recruitment process for all volunteers (some regional programs also run more in-depth background checks). Volunteers who are able to meet initial requirements (such as ability to travel), are free of apparent conflicts of interest, and successfully complete a 36-hour training requirement are certified as ombudsmen. They are then typically assigned to one or two LTC facilities and commit to spending a minimum of two to three hours per week to establish a regular presence in their facility. Some volunteers are willing to cover additional facilities.

During these visits, ombudsmen work to establish trust and a rapport with residents so that residents are comfortable communicating their concerns and complaints, including those related to abuse, neglect, and exploitation.

They also help residents understand and exercise their rights, and promote their dignity and quality of life. Ombudsmen must vary the time of day and day of the week of their visits to help ensure their observations have integrity and that residents have more options to speak with them. In most cases, residents, or their legal representatives, must give permission for ombudsmen to act on their behalf, which may involve reviewing resident records or revealing the resident's identity. When ombudsmen receive a complaint, they are responsible for determining whether there are reasonable grounds for an investigation.

The Office reports certain information, such as the number of complaints received and resolved, annually to the federal Administration for Community Living (ACL) through ACL's National Ombudsman Reporting System (NORS). According to Office officials, as of September 30, 2018, there were about 528 ombudsmen, including 485 volunteers and 42.6 paid full-time equivalent (FTE) staff (37.6 at the regional programs and 5 at the State office). Together, they spent a total of 67,680 hours working with residents during the previous year, and in doing so identified 2,824 complaints. For the three-year period ending September 30, 2018, the Office received nearly \$12.2 million in funding, including \$8.3 million in federal funds, \$3.1 million in State funds, and \$750,000 from localities.

Audit Findings and Recommendations

We found that some of the data maintained in the Office's system may not be sufficiently reliable for NYSOFA's use in analysis at the facility, regional program, or complaint level, which may limit its usefulness in managing the Office. Although this may be the case, it was the only data available for NYSOFA to use for decision making and to report to the ACL. Based on our review of the data, 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. In addition, many facilities are not visited quarterly by an ombudsman, as recommended, leaving residents and their families without a reliable, regular avenue for voicing concerns. 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.

Reliability of Office Data

Office personnel use an electronic system to maintain all information required by the ACL for NORS. This includes information on complaints received and investigated as well as number of facilities covered by the Office, number of staff and volunteers in each region, and related training activities. Based on our audit work, we determined that certain data maintained in the Office's system may not be sufficiently reliable.

To assess the quality of data maintained in the Office's new electronic system, we reviewed selected system records and compared them with supporting information, where available. We identified certain data reliability concerns at the individual entry level – including incomplete fields and differences with other supporting information – that may limit the data's usefulness in analyzing results and trends that help inform Office efforts. For example, our comparison of system complaint data to hard copy complaint documentation showed that 46 of the 66 system records we reviewed either differed from the complaint form, had incomplete fields, or had both types of issues. Conflicting information included the date a complaint was received or closed, the code classifying the type of complaint received, the disposition code representing the outcome of the complaint – such as resolved or referred to another entity – and the complainant role (e.g., resident, ombudsman, physician). Incomplete required fields on the system records included complainant role, disposition code, and whether the complaint was verified (i.e., whether the ombudsman determined the circumstances described in the complaint were generally accurate). We also identified minor differences with information reported in other sources, such as the Office's annual reports or the NORS report.

Office officials acknowledged that their system data is not always accurate and attributed this in part to their transition to a new system in 2017, which resulted in problems with data validation and report generation, as well as with some information – including training data – being lost or improperly translated. They also cited difficulties in ensuring that regional program staff enter complete and accurate information. Finally, they said that some differences may have arisen when staff found errors on the complaint forms submitted by the volunteers and recorded the correct information in the system without noting the change. Because legal provisions related to confidentiality prevented us from reviewing resident-specific complaint details, we could not verify whether this explained the complaint differences we identified.

Although certain Office system data may not have been sufficiently reliable at the individual entry level (for example, an entry may have lacked information in certain fields), it was sufficiently reliable for us to use in aggregate in this report for making comparisons and identifying trends. Where possible, we used other available source documentation to support our findings. We have indicated in this report all instances in which our information and/or conclusions are based on Office system data.

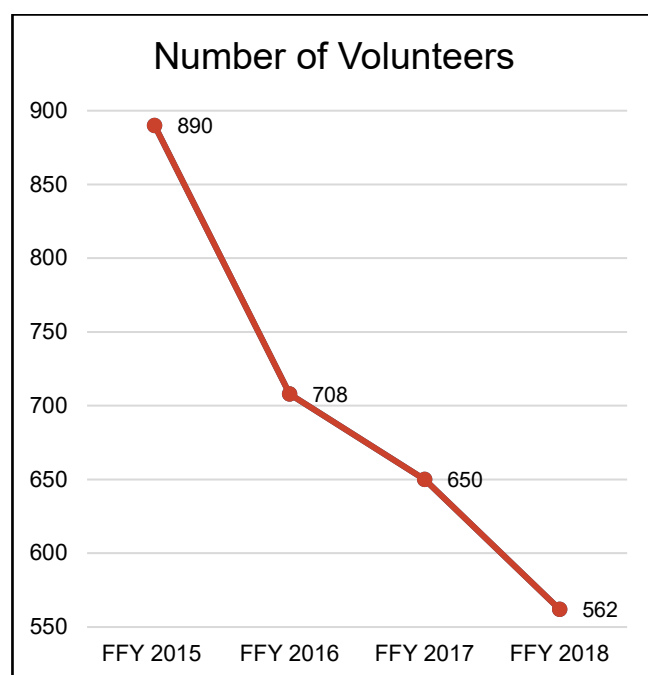
According to Office officials, they are actively working with their system vendor to fix the as-yet unresolved issues and develop a system capable of accurately capturing the data they need. Still, they acknowledged that input errors do occur. They said they are piloting use of a new complaint form – which they anticipate will reduce errors, lessen the burden on the volunteers, and better document the number of complaints received – and are taking steps to educate ombudsmen about the importance of documenting all activities.

Access to Ombudsman Services

Availability of Volunteers

Because of the Office's heavy reliance on its volunteers, recruiting, retaining, and training an adequate volunteer force is essential to its ability to deliver ombudsman services. Yet Office data reflects a 37 percent decrease in the number of volunteer ombudsmen during the three-year period ending September 30, 2018, as shown in Table 1. As of January 2019, about 600 of the approximately 1,500 LTC facilities in the State – about 40 percent – had an assigned volunteer ombudsman (see Exhibit B). Some of the remaining 900 facilities are visited by the 50 paid staff (some of whom work part-time) employed by the regional programs.

Table 1 – Change in Number of Volunteer Ombudsmen*



*According to system-generated data.

Office officials said that the shift to regionalization resulted in larger service areas being covered by the newly reduced number of local offices, which could have resulted in volunteers leaving the Office. There are also aspects of the volunteer role that may make it difficult or uncomfortable: ombudsmen may encounter resistance from facility administration and may witness or hear about disturbing situations, such as those that rise to the level of neglect and/or abuse. In addition, due to variations among regional practices, some volunteer ombudsmen are not paid for their travel to the facilities they visit. Office officials also cited challenges in training new staff on recruiting and managing volunteers as contributing to the decline. To help recruit more volunteers, the Office uses radio and print advertisements and booths at farmers' markets and senior fairs. Office officials also said they have begun paying a monthly stipend to designated "volunteers" who work a minimum of four hours per week conducting additional facility visits or entering data. Nonetheless, volunteer retention is a continuing concern.

Availability of Paid Staff

NYSOFA contracts with providers – typically not-for-profit organizations – to provide ombudsman services at its regional programs. To help ensure that adequate services are provided, the contract language includes a guideline – based on the Institute of Medicine's recommended levels, which are also

used by some other states – of one full-time paid Ombudsman Coordinator for every 2,000 LTC facility beds, as practicable. Yet, similar to the lack of volunteers, Office data shows only 37.6 FTEs were employed at the regional programs during the FFY ending September 30, 2018, which is about half of the recommended number. Eleven of the 15 offices fell short of the guideline that year, and 5 of those 11 would have needed at least three additional full-time staff to meet the recommended level. The region with the highest number of residents and facilities – New York City (3) – was short of the suggested level by about 23 full-time employees that year. Ten offices fell below the suggested level in both of the two FFYs ending September 30, 2017 and September 30, 2016. Table 2 depicts the staffing by region.

Table 2 – Recommended vs. Actual FTEs by Region by FFY

Region	2018			2017			2016		
	Suggested Staff	Actual Staff*	Percent Over (Under)	Suggested Staff	Actual Staff	Percent Over (Under)	Suggested Staff	Actual Staff	Percent Over (Under)
1	6.8	2.4	(65%)	6.5	3.6	(45%)	6.4	1.0	(84%)
2	6.2	2.1	(66%)	6.2	1.9	(69%)	6.2	1.9	(69%)
3	27.8	5.0	(82%)	27.8	6.0	(79%)	27.8	6.0	(79%)
4	6.8	3.0	(56%)	6.8	4.0	(41%)	6.8	3.0	(56%)
5	4.5	3.0	(33%)	4.5	1.2	(73%)	4.4	1.0	(78%)
6	5.1	2.6	(49%)	5.0	3.0	(40%)	5.0	3.5	(29%)
7	0.7	1.0	40%	0.7	1.0	39%	0.8	1.0	32%
8	0.9	0.2	(83%)	0.9	1.5	75%	0.9	1.5	69%
9	2.5	2.2	(11%)	2.5	2.2	(12%)	2.5	2.2	(12%)
10	3.4	2.5	(25%)	3.4	3.2	(5%)	3.4	2.2	(34%)
11	1.8	2.3	22%	1.8	2.3	28%	1.8	2.3	28%
12	0.98	2.0	105%	0.98	2.0	108%	1.0	3.0	208%
13	6.2	3.8	(39%)	6.2	4.4	(30%)	6.2	4.2	(32%)
14	0.7	2.0	178%	0.7	2.0	178%	0.7	2.0	178%
15	7.2	3.6	(51%)	7.2	3.6	(51%)	7.2	3.6	(51%)
Total	81.6	37.6	(54%)	81.2	41.9	(48%)	81.0	38.4	(53%)

* According to system-generated data.

Using data provided by the ACL, we also compared New York to other states based on the ratio of paid staff to the number of beds. The ACL data shows that New York's paid staff per 2,000 beds was approximately 0.56 and ranked 39th compared to other states as of September 30, 2017, as shown in Exhibit C. New York's ratio was about 66 percent of the national average of about 0.85 paid staff per 2,000 beds.

Frequency of Visits

Office officials consider a LTC facility “covered” if an ombudsman – whether volunteer or paid regional staff – has visited it within the last 90 days. This standard for visit frequency is consistent with guidance from the federal Administration on Aging, which defines regular visitation as no less than quarterly. Yet, due at least in part to the declining numbers of volunteers and suboptimal numbers of paid staff at local offices, hundreds of LTC facilities are not being regularly visited by an ombudsman. Further, according to facility visit data, which was substantially supported by a secondary source (hard copy facility visit records) and which we believe is sufficiently reliable evidence of visit frequency, about 28 percent of facilities covered by the Office were not visited at least once by an ombudsman during the FFY ending September 30, 2018.

As shown in Table 3, only 36 percent of facilities were visited at least quarterly, and the frequency of facility visits varied by setting. Visits to nursing homes were more frequent than visits to board and care-type facilities, which include adult care facilities and family-type homes. According to Office officials and regional representatives, nursing homes were given priority because the population is perceived to be more vulnerable.

Table 3 – Visits by Facility Type*

Facility Type	Visit Statistic	FFY Ending September 30		
		2016	2017	2018
Board and Care	Number of Facilities	873	864	866
	Number Visited at Least Quarterly	243	270	214
	Percent Visited at Least Quarterly	28%	31%	25%
Nursing Homes	Number of Facilities	627	627	628
	Number Visited at Least Quarterly	323	364	330
	Percent Visited at Least Quarterly	52%	58%	53%
All LTC Facilities	Number of Facilities	1,500	1,491	1,494
	Number Visited at Least Quarterly	566	634	544
	Percent Visited at Least Quarterly	38%	43%	36%

*According to system-generated data.

Without timely and effective access to these important services, the most vulnerable residents may be reluctant to, or unable to, bring their concerns to someone who can advocate on their behalf. Office officials said that they don't receive sufficient funding to effectively deliver ombudsman services to all LTC facility residents in the State.

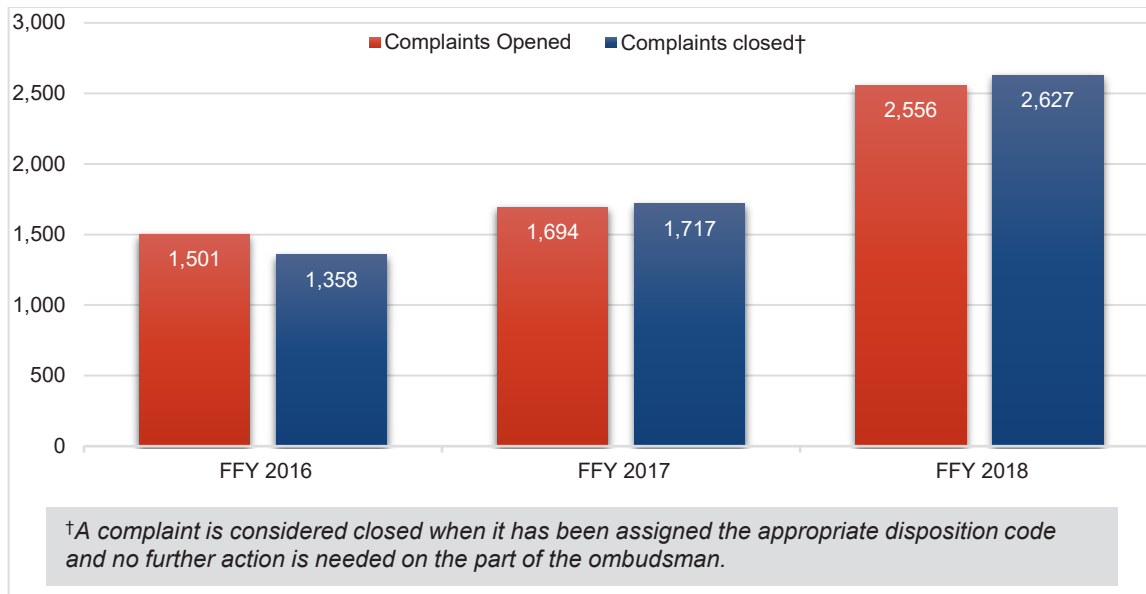
Receiving, Investigating, and Resolving Complaints

Identifying, receiving, reviewing, and resolving complaints made by or on behalf of LTC residents are among an ombudsman's core responsibilities. Each complaint received is classified and entered into the Office's electronic system by a paid ombudsman. According to Office data, most reported complaints during the three-year period we reviewed were related to care, which includes subcategories such as administration and organization of medications, failure to respond to requests for assistance, and inadequate care plans or resident assessments and failure to follow the plan or physician orders. Other complaint categories include autonomy, choice, preference, exercise of rights and privacy (all one category), and environment/safety.

According to Office data, the number of facilities associated with at least one complaint increased significantly – by about 84 percent – from 247 in FFY ending September 30, 2016 to 454 in FFY ending September 30, 2018. Nearly all complaints – 98 percent – arose from facilities that had been visited prior to the complaint. Specifically, 2,620 of the 5,751 complaints (46 percent) that were opened during the period we reviewed were from facilities visited within the previous six months. The vast majority – 5,245 or 91 percent – came from facilities visited within the past year, strongly suggesting that the recency of the ombudsman's visit plays a role in a key part of the Office's mission: being accessible to residents who wish to come forward with their concerns.

The number of complaints received and the number closed increased each year during the three FFYs ending September 30, 2018 (Figure 1). In addition, the average number of days to close a complaint decreased during the period, from 41 to 18 days. Officials attribute the increase in complaints to their recent emphasis on documenting all complaints and on the quality of the documentation, which they accomplished through training and regular communication with Assistant State Ombudsmen.

Figure 1 – Number of Complaints Opened and Closed*



*According to system-generated data.

Volunteer Training

After volunteer ombudsmen are initially certified, the Office requires them to complete six in-person trainings annually, covering areas such as handling complaints and documenting their activities. We reviewed a sample of hard copy training records for 50 volunteers for one calendar year, and found that 31 of the 50, or 62 percent, did not meet the annual training requirements, as follows:

- Buffalo – 15 of 20 volunteers (75 percent);
- New York City – 8 of 10 volunteers (80 percent);
- Rochester – 3 of 10 volunteers (30 percent); and
- Schenectady – 5 of 10 volunteers (50 percent).

Most of the 31 volunteers missed three or fewer training events, although 12 missed four of the six that were required. Training is essential for ensuring volunteer ombudsmen have the necessary knowledge and skills to appropriately and effectively advocate for residents. Office officials said that they are working to make training events more accessible, including making them available online.

Other Matters

Identifying and Addressing Potential Conflicts of Interest

We found the Office has established controls that minimize the potential for both organizational and individual conflicts of interest and provide ways to address them. We did not identify any apparent conflicts of interest in our limited testing.

The Office generally uses NYSOFA counsel for advice, consultation, and assistance; however, it may use outside counsel in certain circumstances to avoid a potential conflict of interest. Under the Act, state or local ombudsmen, authorized representatives, or their immediate family members are prohibited from having a conflict of interest with their ombudsman duties, such as being employed by or having direct involvement in licensing or certifying a LTC facility. Further, under the Law, the Office is required to have processes to identify and remedy conflicts of interest, and to annually report to the ACL, as part of its NORS report, any identified conflicts and the steps taken to remedy or remove them. We found that the Office has relevant written procedures and that it disclosed to the ACL, for each of the two FFYs ending September 30, 2017 and 2016, a risk that members of regional programs' boards of directors may have a financial interest in a LTC facility or may be employed by, or participate in, its management. Beginning in October 2016, NYSOFA's contracts with the regional programs include disclosure provisions to minimize and remedy potential conflicts of interest.

Systems Advocacy

The National Long-Term Care Ombudsman Resource Center (NORC) defines systems advocacy as recommending changes to a system – such as a facility, government agency, policy, or law – to benefit LTC residents. The Office has undertaken efforts to advocate at the systems level, but could strengthen its efforts in commenting on legislation and releasing on-time annual reports and could benefit from using reliable data to develop a long-term advocacy plan. To be effective and credible in this area, it needs timely and accurate information about proposed legislation – including complaint trends – in LTC facilities, both at the State and national levels.

Office officials and regional representatives participated in a Systems Advocacy Day in October 2017 and developed partnerships with entities that share an interest in improving long-term care, including the State Department of Health, the Long-Term Care Community Coalition, and the New York State

Health Facilities Association. To identify State laws and regulations and federal bills that may warrant their attention and comment, they use the State Legislative Retrieval System and the NORC.

One way the Office publicizes and addresses the systemic issues it identifies is through its annual report, required to be submitted by March 31. According to the Law, annual reports should, among other things, communicate information about the Office and its services and raise awareness of issues such as residents' rights and elder abuse. The 2017 annual report (the most recent available at the time of our audit) included all required information, but was submitted on November 30, 2018 – eight months after the March 31 deadline – and was distributed to the public through the Office's website even later, in mid-March 2019. The late reporting delays shared knowledge of this advocacy tool that could help highlight the needs of residents and publicize the value of the Office's services.

Office officials said their primary focus in this area during the period we reviewed was bringing State regulations and the Law in compliance with federal regulations, which were adopted and enacted in February 2018 and August 2018, respectively. They cited resource limitations, including funding and staff, as a significant barrier to their advocacy efforts. Officials also said they use information from regional program staff and volunteers to identify common issues and trends. They acknowledged that they don't use their system data to inform their work in this area, but said they plan to after they have addressed their system data concerns. Developing a long-term agenda or a plan that is based, in part, on reliable Office data would provide a foundation and a control mechanism to help compare actual to planned goals.

Recommendations

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

-
4. Strengthen efforts to ensure that volunteer ombudsmen receive required annual training.
 5. Develop a long-term systems advocacy plan that is informed by reliable Office data and that identifies key advocacy goals and activities.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether the Office is carrying out its responsibilities under the Law, including adequately advocating for the needs of the people it's intended to serve. Our audit covered the period October 1, 2015 to January 30, 2019.

To achieve our audit objective and assess relevant internal controls, we reviewed laws and regulations and Office instructions, procedures, and reports. We also reviewed the contracts with regional program providers. We interviewed NYSOFA and Office staff and management, and regional program representatives, to gain an understanding of their efforts. We obtained and reviewed national ombudsman program statistics and information about expenditures from the ACL for the three FFYs ending September 30, 2017. We became familiar with, and assessed the adequacy of, the Office's internal controls as they related to its performance and our audit objective.

We also visited four regional program offices in Buffalo, New York City, Rochester, and Schenectady. We judgmentally selected these offices by considering factors such as geographic location, total number of beds served by the region, and reported conflicts of interest and resident deaths, if any. We reviewed the work plans these regions submitted to the Office. We also compared Office system data submitted by the regions for the period October 1, 2015 through September 30, 2018 with data the regional programs maintained in hard and electronic copy to determine whether facility visits, complaints, and training attendance records were entered into the Office system accurately and whether volunteer ombudsmen had received required training. We used both random and judgmental methodologies to select samples to review: we randomly selected 20 of 15,948 monthly facility visits, and selected 50 complaints judgmentally and 50 randomly, for a total sample of 100 of 2,535 complaints; and selected training records for 25 volunteers judgmentally and 25 volunteers randomly, for a total sample of 50 of 835 volunteers; and attendance records for 40 of 294 training classes. We were unable to review 34 of the 100 complaint records in our sample because separate records (i.e., external to the Office system) are not required and, according to officials, they were either not used or maintained by the regional program. In choosing records judgmentally, we selected those that ensured we had a mix of available records for the facility locations, time periods, volunteers, and training events, as applicable. The results from our random sampling and our judgmental sampling cannot be projected to the population as a whole.

To test reliability of the Office's electronic system reports for the purposes of addressing our audit objective, we interviewed Office officials and reviewed available supporting information as well as documentation associated with

any previously identified data issues. In our professional judgment, the system facility visit data was sufficiently reliable. However, as described in this report, after reviewing possible limitations in the system data provided to us and discussing them with officials, we determined, based on our professional judgment, that certain other data used in our report may not be sufficiently reliable at the data entry level or facility level for use in managing the Office. We concluded, though, that it was sufficiently reliable to use in aggregate for making comparisons and identifying trends in this report. For example, system information regarding complaints, staffing and volunteer totals, and number of facilities and beds may not be sufficiently reliable at the individual entry level because, for example, one or more fields was missing or differed slightly from other sources, but is sufficient for purposes of reporting on trends. We relied on other source documentation to support our findings where we could and indicated in this report all instances in which information and/or conclusions use the Office's system-generated data.

As part of its audit procedures, the audit team used Geographic Information Systems software for geographic analysis. As part of the geographic analysis, we developed visualizations (see Exhibits A, B, and C) to improve understanding of our report. To improve ease of use, some minor locational changes were made in these visualizations. The changes do not materially affect the accuracy or interpretation of the underlying data or visualization.

Statutory Requirements

Authority

The audit was performed 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 conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

We provided a draft copy of this report to NYSOFA officials for their review and formal comment. We considered their comments in preparing this final report, and attached them to the end of the report. NYSOFA officials agreed with the audit recommendations and indicated the actions they have taken so far to implement them. NYSOFA officials also pointed out that the decline in long-term care ombudsmen they experienced, and are working to address, is part of a pattern that is occurring across the nation.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Director of the New York State Office for the Aging shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Exhibit B

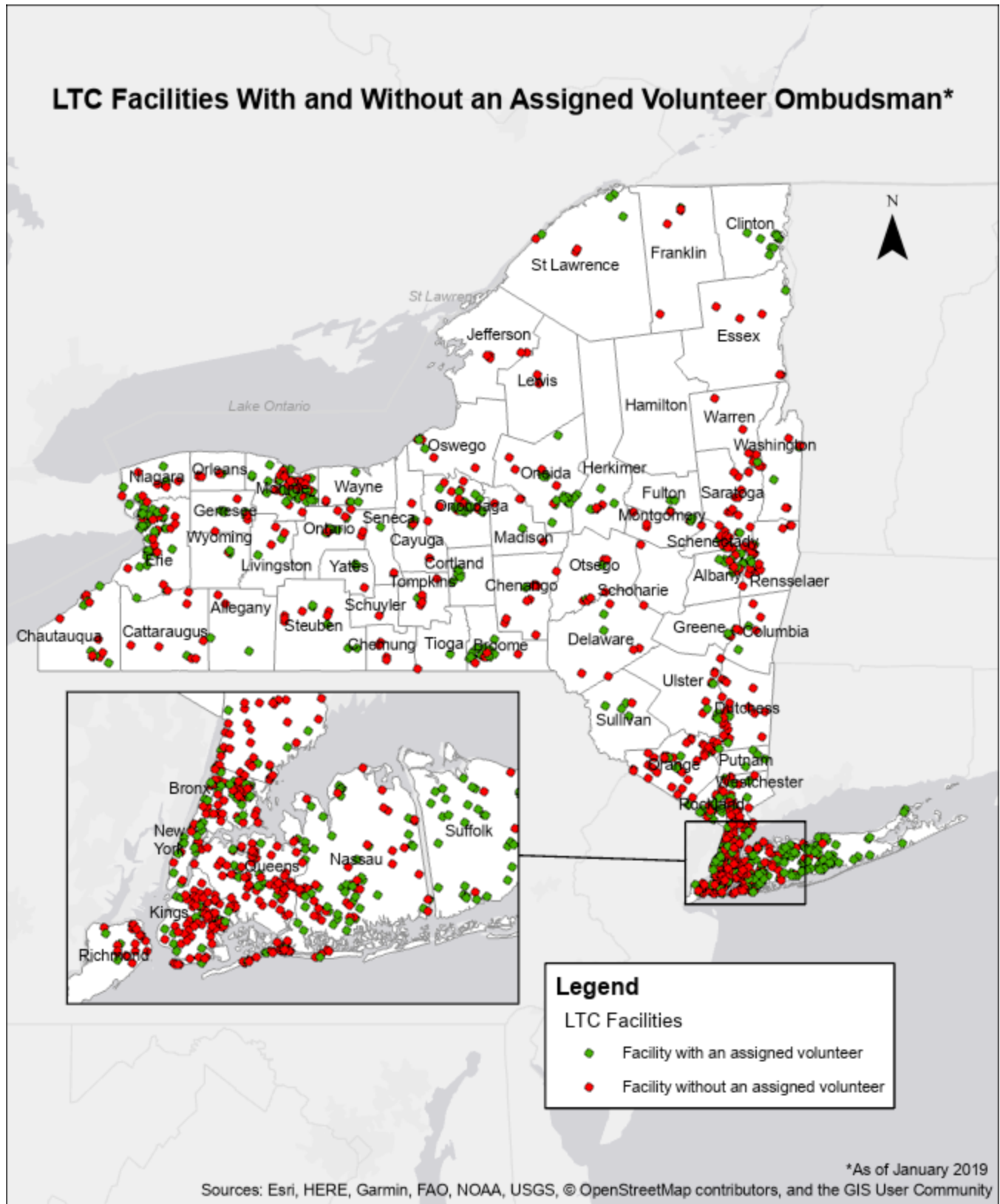
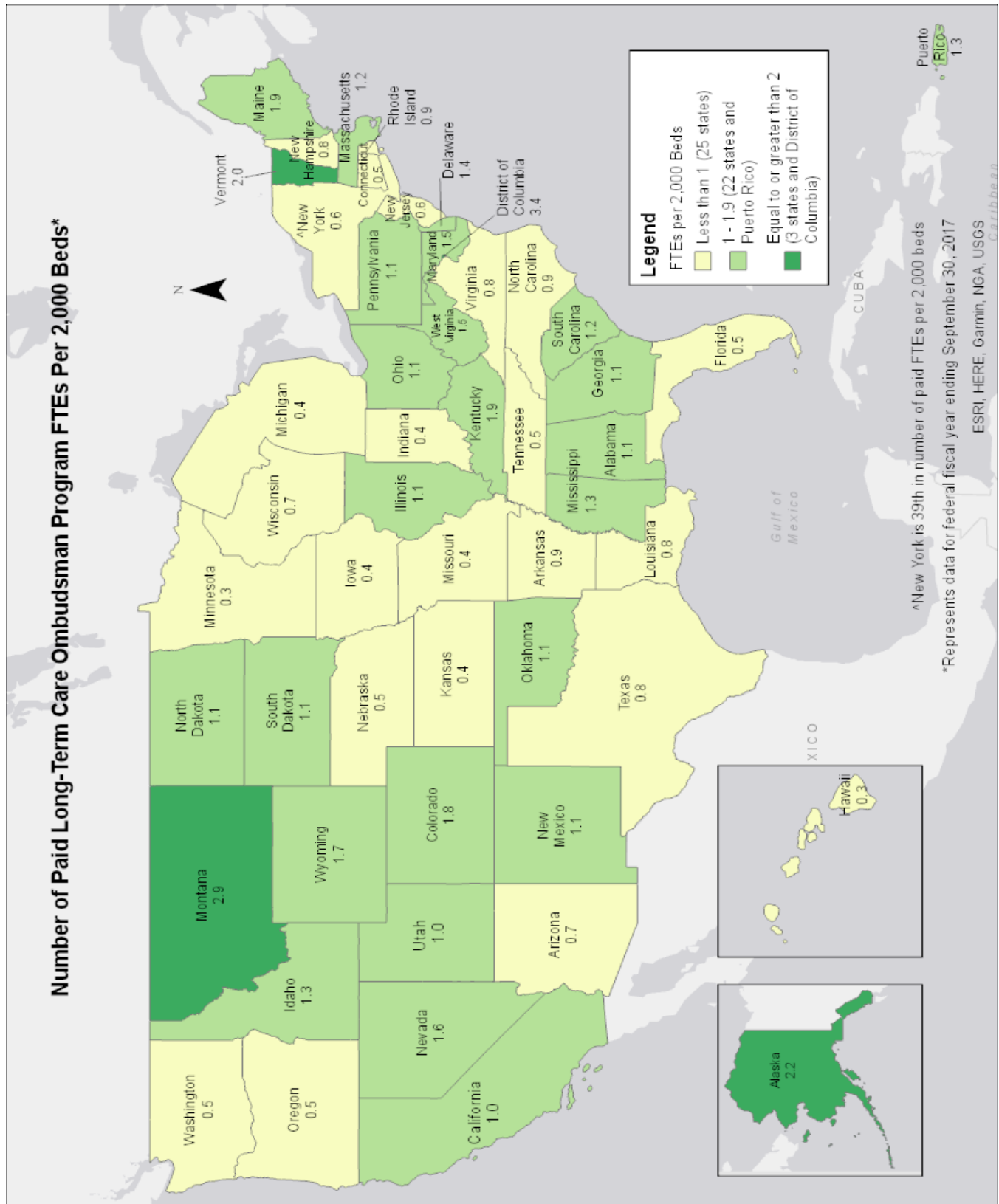


Exhibit C



Agency Comments



Office for
the Aging

GREG OLSEN
Acting Director

New York State Office for the Aging's Response to the Office of the State Comptroller's Audit of the Long-Term Care Ombudsman Program

Report 2018-S-048

The New York State Office for the Aging (NYSOFA) offers the following four comments regarding the findings and recommendations from the audit of the Long-Term Care Ombudsman Program (LTCOP):

- 1) The audit noted that data maintained by LTCOP related to complaint records, volunteers and staff, and number of facilities may not be reliable for use in analysis. OSC recommended that NYSOFA seek to advance procedures to improve the reliability of the system-generated LTCOP data by working with the existing vendor to address unresolved issues and to implement ways to prevent and detect input errors, including incomplete or blank fields. NYSOFA shares OSC's concern in this area and has been working with the vendor to address these issues. Because of these issues, NYSOFA has required the vendor to implement validation protocols within the system to minimize data entry errors and eliminate incomplete or blank fields, thus allowing for more meaningful analysis of the data provided by staff and volunteers. These changes to the system were completed in May 2019. The vendor also adjusted the data system to gather facility data directly from the Department of Health to ensure accurate facility information.
- 2) The audit determined that residents in Long-Term Care facilities lack regular access to ombudsman services due in part to the decline in the number of volunteers combined with the lack of paid regional program staff. It was recommended in the audit that LTCOP take steps to identify and understand reasons for the decline in volunteers and differences in regional program results, and to use the resulting information to develop and implement strategies to improve access to ombudsman services. NYSOFA points out that a decline in long-term care ombudsman volunteers is occurring across the nation. The Administration for Community Living (ACL) has recognized this decline and is providing trainings at national conferences to assist state ombudsman programs in addressing this trend.

NYSOFA has taken steps to address the declining number of volunteers in New York by developing a detailed survey that was taken by all current LTCOP volunteers to gather a perspective on the challenges they experience when performing duties in their role as an ombudsman. NYSOFA identified the completion of required documentation as the biggest challenge reported by the volunteers. LTCOP is making changes to the required paperwork that volunteers will be expected to complete beginning with the fiscal year starting 10/01/19. Further analysis of the results is being conducted to determine what other changes may be needed to recruit more volunteers.

Based on data provided by ACL and a study by the Institute of Medicine, OSC found that New York LTCOP is staffed at forty-six percent of the recommended level. NYSOFA recognizes that having a limited number of paid staff in the regional programs has an effect on LTCOP's ability to provide a regular presence in facilities. NYSOFA acknowledges the need for increased funding for LTCOP and will be pursuing various avenues to enhance funding for the program in order to improve access by

residents to advocacy services and to address the system issues and quality of life concerns being expressed by residents.

- 3) Another recommendation from the audit is to strengthen efforts to ensure that all volunteer ombudsmen consistently participate in the required annual training. The survey of LTCOP volunteers referenced above (response 2) indicated this is challenging for LTCOP's current corps of volunteers. NYSOFA will be exploring alternative training methods to be implemented in the next fiscal year.
- 4) The final recommendation offered was to develop a long-term systems advocacy plan that is informed by reliable LTCOP data and that identifies key advocacy goals and activities. NYSOFA has identified the current top complaints of residents to be related to discharge, transfer, and eviction. LTCOP has formed a work group in one of the regions with multiple stakeholders to identify barriers and develop solutions to better serve residents facing these challenges. Information is being evaluated across the state to develop a strong advocacy agenda and a strategy for supporting this intensive work.

Contributors to Report

Executive Team

Tina Kim - *Deputy Comptroller*
Ken Shulman - *Assistant Comptroller*

Audit Team

Stephen Goss, CIA, CGFM - *Audit Director*
Sharon L. Salembier, CPA, CFE - *Audit Manager*
Andrea LaBarge, CFE - *Audit Supervisor*
Christi Martin - *Examiner-in-Charge*
Brindetta Cook - *Senior Examiner*
Andrew Davis - *Senior Examiner*
Rupert Wilmot-Dunbar - *Senior Examiner*
Rachelle Goodine - *Mapping Analyst*
Andrea Majot - *Senior Editor*

Contact Information

(518) 474-3271
StateGovernmentAccountability@osc.ny.gov
Office of the New York State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236



Like us on Facebook at facebook.com/nyscomptroller
Follow us on Twitter @nyscomptroller

For more audits or information, please visit: www.osc.state.ny.us/audits/index.htm