

# The New York State Long Term Care Ombudsman Program

An Assessment of Current Performance, Issues & Obstacles

## *Executive Summary*



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[www.nursinghome411.org](http://www.nursinghome411.org)

[www.ltccc.org](http://www.ltccc.org)

[www.assisted-living411.org](http://www.assisted-living411.org)

Funding for this work provided by:

**The Robert Sterling Clark Foundation**

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**NOTE:** The full report, which includes graphics and charts of our relevant findings, as well as a number of remarkable insights by ombudsmen themselves on the challenges they face and their commitment to improving the lives of nursing home residents, is available at: <http://www.nursinghome411.org/?articleid=10080>.

We would like to express our appreciation to the ombudsmen across New York State who took the time to participate in the survey and, of course, for the valuable and important work that they do to protect nursing home residents, assisted living residents and others who rely on long term care services.

For more information on LTCCC visit our websites: [www.ltccc.org](http://www.ltccc.org), [www.nursinghome411.org](http://www.nursinghome411.org) and [www.assisted-living411.org](http://www.assisted-living411.org) or contact us by email: [info@ltccc.org](mailto:info@ltccc.org), phone: 212-385-0355 or US Mail: Long Term Care Community Coalition, One Penn Plaza, Suite 6252, NY, NY 10019. Follow us on Twitter: @LTCconsumer.

Please consider making a tax-deductible contribution to support our work to protect nursing home residents & other LTC consumers: [ltccc.org/ltccc.orgsupport.shtml](http://ltccc.org/ltccc.orgsupport.shtml).

### Background

New York’s elderly and disabled nursing home residents are among our most vulnerable citizens. They depend on their nursing homes for twenty-four hour a day care and monitoring, and for providing them with the good quality of life and dignity that everyone deserves and which, under federal and state laws, nursing homes are mandated to provide. Unfortunately, as is well known, too often nursing homes fail to meet these standards. For instance, a February 2014 report from the US Inspector General assessed, for the first time ever, what happens to people who go to a nursing home for short-term rehab. The IG found that one out of every three suffered harm in the

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facility within 35 days due to problems like inadequate care and monitoring, inappropriate medication management and neglect. Close to 60% of the time this harm was determined to have been preventable. Six percent of those who were harmed died as a result.

Given the nursing home industry's reputation for providing poor care and quality of life, consumers are increasingly turning to assisted living and home care when they need long term care (LTC). However, given our aging population, and increasing numbers of people living longer with Alzheimer's Disease and other serious conditions, nursing home care will continue to be an important setting for the foreseeable future. Currently, close to 110,000 people reside in New York State nursing homes. Approximately 40% of us who live to age 65 will reside in a nursing home at some point in our lives.

Monitoring and oversight of nursing home care is likely to become even more salient and urgent now, as New York is embarking on sweeping changes to its long term care system. This year (2014) New York is implementing a major policy change, mandating that everyone who needs access to long term nursing home care under Medicaid join a managed care plan. This will essentially, for the first time, privatize access to nursing home care for Medicaid beneficiaries (who comprise a significant majority of our nursing home residents). New Yorkers will effectively be limited to the nursing homes with which their Managed Long Term Care (MLTC) plan chooses to contract. While the plan includes numerous incentives for cost-cutting in care, and financial protections for nursing homes and MLTC plans, it provides no protections to ensure that residents receive decent care, or even that nursing homes have, at a minimum, safe staffing levels.

### **Study Overview**

This study was undertaken in response to reports we received from several stakeholders and a news reporter that the number of nursing home resident complaints handled by the New York State LTC Ombudsman Program (LTCOP) had dropped significantly in recent years. Over the years, LTCCC has received reports from individual ombudsmen that they were impeded in their work, but this was the first time that we had received reports (from different sources) that there was a significant decrease in complaint handling system wide. In addition, our and other studies over the years have indicated that many ombudsmen face significant challenges in undertaking the public or systemic advocacy that is part of their mandate under the federal Older Americans Act.

Given the persistence of serious problems in nursing home care in New York and the inability of the state enforcement agency, the New York State Department of Health, to ensure that residents are protected from abuse, neglect and other harm, we felt that it was important to find out what, if anything, was going on with the Program. Specifically, we undertook this study to (1) assess the performance of the NYS LTCOP and document strengths and weaknesses that might exist; (2) identify the obstacles that ombudsmen themselves perceive as having in trying to fulfill the responsibilities outlined in the Older Americans Act; and (3) develop recommendations, based on our findings, for both the LTCOP (to strengthen its work to protect nursing home residents and other LTC consumers) and for the state as it creates a new and separate ombudsman program for managed long term care.

There were two components to this study:

1. **Quantitative assessment of the New York State LTC Ombudsman Program staffing and complaint handling performance.** We collected state and national data from the National Ombudsman Reporting System (NORS), which contains data for the years 2000-2012. These data were assessed longitudinally as well as comparatively.
2. **Quantitative and qualitative assessment of New York State ombudsmen’s experiences and perceptions.** We conducted an anonymous survey of LTC Ombudsman Program paid program and volunteer staff across New York State in November-December 2013.

### **Results: Comparing the Two Largest States, New York vs. California**

We identified a number of significant issues that appear to undermine the strength, independence and viability of the NY State program as a whole. When we compared New York to California (whose nursing home population is closest in size to New York’s and which, similarly, has a diverse population in terms of ethnicity, economics and rural/suburban/urban) we found that, although New York’s nursing home population is larger than California’s, its Ombudsman Program is dwarfed by California’s in significant ways. California far surpassed New York in terms of staffing, complaints handled, cases closed and funding every single year from 2007-11 (the period for which information is available on the NORS website). For instance, in 2007, California’s LTCOP closed three times as many cases as did New York’s. By 2011, that gap had widened: California closed close to 10 times as many cases as New York did that year.

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### **Results: New York LTCOP vs. Other States’ LTCOPs**

New York has almost twice as many LTC facility beds per paid LTCOP staff person than the national average. This means that that they have to “cover” many more nursing home residents than do professional ombudsman staff in other states.

The NYS LTCOP is the 5<sup>th</sup> lowest in the entire U.S. in terms of percentage of state support and the 16<sup>th</sup> lowest in terms of actual dollar amounts of state funding. Given New York’s size, and the fact that it has, by far, the largest nursing home population in the country, these figures together indicate a serious lack of support by the state in ensuring that nursing home residents and families have meaningful access to LTCOP services (and, conversely, that our state LTC ombudsmen are supported in their vital work).

Overall for the country, states contributed an average of just under 40% of their total LTCOP budgets in 2012. New York contributed just eight percent (8%). Furthermore, NY State support for the LTCOP has literally flat-lined over the last decade.

Approximately 10% of US nursing home residents had a complaint handled by an ombudsman in 2012. In California, this figure was close to 25%. In New York, on the other hand, less than three percent (3%) of residents had a complaint handled by the LTCOP.

Our findings in respect to many of the critical components of resident care and quality of life were striking. For example, in 2012 there were 9,999 cases of resident abuse, neglect and exploitation handled by ombudsmen in the US. Yet New York, with close to 10% of all the nation’s nursing home residents, only handled 65 of these cases according to the NORS data (less than 1%). That same year, New York handled 336 complaints regarding improper admission, discharge or eviction while the total for the US was 11,091 (i.e., New York handled approximately 3% of these complaints). New York’s LTCOP handled less than half the complaints relating to resident autonomy, exercise of rights and dignity than did California’s LTCOP in 2012 and, in regard to complaint relating to poor resident care, New York’s LTCOP handled a total of 1,126 case according to NORS data. This was less than 3% of US cases (43,044) and less than 20% of those handled by California’s LTCOP (6,361).

### **Results: NYS LTCOP Performance over Time**

Both complaints handled and problems resolved by NY State ombudsmen fell every year from 2007 to 2012. Altogether, the drop over these years is astounding: nursing home complaints handled by ombudsmen fell over 80% and the number of nursing home complaints and problems that reached a “satisfactory resolution” fell over 85%. In addition, the percentage of problems resolved to cases handled also dropped significantly, from 77% of cases in 2007 to 60% in 2012.

### **LTC Ombudsman Survey Results**

Only about half of the ombudsmen who participated in our anonymous survey indicated that they are aware of, and participate in, the following two ombudsman activities delineated in the Older Americans Act: speaking to policymakers (48.15%) or advocating for systemic change (52.29%). Less than one in five (17.76%) speak to the press about issues.

Slightly over one-third of the respondents reported that their (or their office’s) ability to handle problems has changed in recent years.

When problems are not recorded, there is not even a public record that they happened. Worse than suffering in silence, the resident’s suffering has been effectively silenced and there is no way for anyone to know what may be going on in a facility.

When asked to identify their top three challenges, 90% chose a category that related to being explicitly or implicitly prevented from performing certain activities by the state office, their sponsoring organization or their local program office. Lack of time or resources was the biggest single challenge cited by ombudsmen, followed closely by a perceived lack of clarity in the law relating to ombudsmen activities.

### **Recommendations for the LTCOP**

The State/NYS LTCOP should:

1. Immediately address the state funding imbalance and provide sufficient financial support to the LTCOP to fulfill its mandate to protect nursing home and assisted living residents. Minimally, New York should rise to the level that California provides for its LTCOP program,

taking into account New York’s higher nursing home population. Thus, New York should provide, minimally, \$3,436,971 annually.<sup>1</sup>

2. Immediately and substantively address the low rate of complaint handling and resolution. In addition to adequate funding, this should include concrete steps to ensure that the state office is independent and that its leadership is willing and able to vigorously carry out the full range of important ombudsman activities (and ensure that local programs are as well).
3. Take affirmative steps to ensure that Ombudsman Coordinators –who oversee the programs on the local level – are clearly authorized and supported to speak to the press and policymakers and undertake systemic advocacy. This includes the following criteria:
  - a. Coordinators have clear authority to speak to the press, including: writing letters to the editor or op-eds, appearing on radio or tv programs, etc....
  - b. Coordinators have clear authority to oversee and designate these activities within their organizations and the area that they cover geographically.
  - c. Host or sponsoring organizations – which house local programs – are neither permitted to represent the LTCOP publically nor interfere with the Coordinators role and authority.
4. Implement a system of information sharing and coordination between the new Medicaid LTC Ombudsman Program and the existing LTC Ombudsman Program.

The NYS LTC Ombudsman should:

1. Provide training and resources to the local Program Coordinators on systemic advocacy and speaking to the press/policymakers.
2. Provide an annual report on these activities to NYS Senate and Assembly Aging and Health Committee chairs, said report to be posted on the NYS LTCOP website.

#### **Recommendations for NY State for the new MLTC Ombudsman Program**

1. Ensure that the MLTCOP is completely independent of both government (state and local) and industry (including providers, insurance companies, worker unions and associations).
2. Ensure that the MLTCOP is sufficiently funded to carry out its mission.
3. Authorize the MLTCOP to provide vigorous advocacy for consumers.
4. Ensure that the MLTCOP is culturally competent to work with diverse consumers.
5. Develop a mandatory case handling reporting form for use by the MLTCOP.
6. Require that the MLTCOP collect data on case handling and issue an annual public report, including the data, on program activities.
7. Permit and provide resources for the MLTCOP to undertake public and systemic advocacy.

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<sup>1</sup> California provided \$3,212,122 in support of its LTCOP in 2012; as noted earlier New York’s nursing home population is 107% of California’s.