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New York State's Innovative New Program for Risk Management: Bringing Leading Private Sector Practice to Government

Office of New York State Governor Andrew M. Cuomo

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New York State's Innovative New Program for Risk Management

Bringing Leading Private Sector Practices to Government

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On January 21, 2015, Governor Andrew M. Cuomo [implemented New York's first statewide system for risk management](#). Designed to identify, manage and mitigate vulnerabilities in the areas of ethics, risk and compliance, this system ensures that efficient and responsive government services are provided to New York's almost 20 million residents.

Author:

This brief was prepared by the office of New York State Governor Andrew M. Cuomo.

The size, scope and complexity of New York's operations demanded the implementation of a risk management system. New York's government includes a fiscal year 2016 operating budget of \$94.25 billion, 110 executive agencies and authorities with over 224,000 employees, \$198 billion in contracts, and \$35 billion in federal benefits programs. The risks New York faces are also increasingly complex as technological and cyber-based threats continue to proliferate in numbers and impact.

The objective of New York's risk management system is to capture the dynamic and efficient aspects of private sector risk management strategies while remaining true to the fundamental purpose of government – to serve the people and safeguard their wellbeing. It seeks to proactively identify and mitigate existing and emerging risks to confront the factors that trigger crises, and works within the structure of State agencies and authorities to evaluate operations to improve ethics and compliance with laws, regulations and policies. In this way, unlike government regulatory organizations, New York's risk management system embeds experienced attorneys within its agencies and authorities to advocate for the swift resolution of complex problems through early detection and the promotion of ethical and responsive action.

Chief Risk Officer and Special Counsels for Ethics, Risk, and Compliance

New York's Chief Risk Officer is responsible for the design and implementation of the State's multi-layered and proactive approach to risk management. The Chief Risk Officer oversees the State's 19 Special Counsels for Ethics, Risk and Compliance who work from within key State agencies and authorities.* Special Counsels function on two

* As of June 2016, Special Counsels serve in the following New York State agencies and authorities: Department of Agriculture and Markets, Department of Environmental Conservation, Department of Financial Services, Human Rights Portfolio, Department of Homeland Security and Emergency Services, Department of Motor Vehicles, Department of Corrections and Community Supervision, Department of Labor, Department of State, Department of Taxation and Finance, Empire State Development, Homes and Community Renewal, Office of Information Technology Services, Justice Center for the Protection of People with Special Needs, State Insurance Fund, Office of Children and Family Services, Office of General Services, Office of Parks, Recreation and Historic Preservation, Office of Temporary and Disability Assistance, State Liquor Authority, New York Power Authority, New York State Energy Research Development Authority, Public Service Commission and the Long Island Power Authority. In terms of the agencies and authorities chosen to participate in the Special Counsel risk management program, a number of factors were considered: the size of the agency, whether the agency oversees significant funds, whether the agency is in charge of persons in care, and whether the agency's functions make it more vulnerable to particular risks, such as data breaches, for example. For the professional profiles of New York State's risk management team and further information about the program, please visit: www.ny.gov/ethics-risk-compliance.

planes. They collaborate with key stakeholders – both inside and outside state government -- on matters that significantly affect operations, and review proposed programs and initiatives to identify hidden and emerging risks. These matters can include anything related to the mandate of the agency and its operational risks. For example, in the wake of the escape of two inmates from the Clinton Correctional Facility, the Special Counsel for the Department of Corrections and Community Supervision (DOCCS) was heavily involved in examining DOCCS protocols, dealing with issues stemming from the manhunt that followed the escape, responding to the results of outside investigations into the causes of the escape, and handling press issues and the potential for reputational harm arising from the incident. In addition to agency- and authority-specific issues, Special Counsels communicate with each other in real-time on matters of statewide significance. This dual approach builds risk management into agency and authority program design and promotes the development of statewide best practices.

Within their agencies and authorities, Special Counsels are members of the executive team, advancing broad initiatives and assisting in the day-to-day areas of organizational, reputational and crisis risk management; participating in executive level meetings on agency operations and major initiatives; ensuring that integrity is incorporated into standard agency protocol; providing guidance and feedback on internal control plans and reports and internal audit reports and assisting with evaluating and drafting responses to external audit reports – working with executive management to design and implement responsive remediation as appropriate; guiding and assisting in the drafting, review and updating of agency policies; reviewing Freedom of Information Law requests and the responsive records with agencies' Records Access Officers to ensure that responses are appropriate and produced in a timely fashion; collaborating with public information officers to provide assistance with public information management to promote transparency and public trust; and implementing best practices developed through collaboration with Special Counsels from other agencies.

To be sure, Special Counsels, working with other members of their executive teams, have contributed to significant, positive change within their respective agencies and authorities by, for example:

- Enhancing the security of tax return information for online taxpayers; Devising and implementing new supplemental reporting documents related to the use of force in correctional facilities;
- Strengthening website access protocols to prevent potential hacking and enhancing employee understanding of the State's information and cyber security requirements;
- Improving conflicts of interest policies related to industry affiliations, nepotism and favoritism;
- Increasing government performance by reducing licensing times;
- Bettering internal agency communication practices;
- Improving the quality of evidence in administrative hearings so as to decrease the number of cases that are dismissed before the merits of the claim are reached; and
- Developing and revising Codes of Conduct and ethics-related protocols, including financial disclosures and recusal procedures, to encourage ethical conduct by members of councils, boards and other organizations that are overseen by state agencies and authorities, and ensuring that the documents utilize plain, accessible language that can be readily understood.

Special Counsels also assess those risks that persist across many State entities, identifying and developing remedial measures that can be widely implemented. This synergistic effect allows Special Counsels to leverage limited resources and maximize results for the taxpayer. Finally, as detailed below, Special Counsels are advancing statewide initiatives by capitalizing on this unprecedented network and their diverse experience and skill sets.

To maximize resources and develop statewide best practices, Special Counsels work as a virtual office. They regularly communicate with each other by telephone and video conference to share their strategies for dealing with various areas of risk in their respective agencies and authorities, allowing them to learn from their colleagues' approaches.

During in-person monthly meetings, Special Counsels tackle specific, prioritized risks, develop assessment plans and advance inter-agency and statewide initiatives. These regular meetings foster among the Special Counsels a strong sense of team identity, leading to mutual support for their efforts and pride in their work.

The Special Counsels have received training in risk management assessment and response from experts in the field. In addition, the program includes a mentoring component, whereby a rotation of two senior Special Counsels mentor new Special Counsels at the start of their tenure, leading to a smoother transition and increased effectiveness.

The Risk Management System

A hallmark of New York's risk management system is the regular and ongoing interaction members of the State's risk management team have with agency and authority executive leadership and the Executive Chamber. The Chief Risk Officer meets with the Special Counsels weekly, and provides guidance regarding the goals and focuses of the State. Beyond that, Special Counsels always have a direct line of communication with the Chief Risk Officer. When necessary, Special Counsels advocate for their agencies and authorities by elevating issues and recommending appropriate remedies. In this way, the problem is dealt with efficiently and expeditiously, with the full breadth and scope of the entire risk management system available to help. In addition, on a monthly and as-needed basis, Special Counsels coordinate briefings from Chamber and executive leadership to the Chief Risk Officer on critical risk areas such as homeland security, cyber, health, and financial services. These collaborations provide the Chief Risk Officer with comprehensive insight into particularized risks to ensure appropriate and immediate action.

Statewide Reach

Special Counsels are also focused on statewide challenges driven by a desire to implement best practices across the board. One such initiative was devised in response to the Governor's recognition of the costly and disruptive effects of litigation on State operations.

On November 19, 2015, Governor Cuomo announced a partnership with the New York State Office of the Attorney General to reduce litigation risk impacting New York State agencies and authorities. As the State's chief legal advisor, the Office of the Attorney General brings historical knowledge and expertise to this initiative. This joint comprehensive litigation risk management program is the first of its kind in the nation.

The size, scope and complexity of State operations make this litigation mitigation initiative a necessity. The primary focus of a general counsel office in an agency or authority, much like the Office of the Attorney General, is to respond to and defend specific cases brought against the State. In contrast, the primary focus of this initiative is to engage in a proactive analysis to ultimately reduce the volume and cost of litigation across the State.

While the kinds of cases brought against agencies and authorities vary, distinct categories of litigation like personal injury and employment are shared by many. This overlap presents an opportunity to analyze significant and recurring litigation, develop and implement strategies to avoid future litigation, and reduce litigation against the State as a whole. The litigation risk management program is collecting data from agencies and authorities on the types of litigation they face, analyzing trends in litigation, and looking for opportunities to reduce litigation by ensuring that agencies are internalizing the lessons learned in the course of these cases. The ultimate goal is to decrease the number of lawsuits filed against the State by helping the agencies and authorities avoid whatever practices and procedures are leading to the suits in the first place.

The program is also working towards a statewide system for tracking all litigation against the State, including adoption of data standardization procedures to make data collection and synthesis more efficient. All of these efforts are supported by the State's Chief Data Analytics Officer, whose expertise provides invaluable insight to the initiative. The litigation mitigation initiative targets agencies most affected by litigation, including the Department of Corrections and Community Supervision as well as agencies providing various health and human services. In addition, the initiative seeks to identify potential improvements to statewide policy and procedures for administrative hearings; enhance agency evidence collection and preservation practices; pursue the development of early claims resolution and diversions programs; and develop personnel training programs to reduce the likelihood of litigation.

Conclusion

New York's risk management system serves the people of the State by ensuring that agency and authority decision makers give full consideration to ethics, risk and compliance as they chart the course for New York's future. Through statewide and intra-agency initiatives, Special Counsels maximize their innovative communication network to be responsive to emerging governmental needs. In this way, New York's risk management system further advances the government's ability to serve the people.

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