



2022

Tennessee
Long-Term Care Ombudsman

ANNUAL REPORT

The Office of the State Long-Term Care Ombudsman is a programmatically independent advocacy service located within the Tennessee Commission on Aging and Disability (TCAD). Points of view, opinions or positions of the Ombudsman do not necessarily represent the view, positions, or policy of TCAD [45 CFR part 1324.11(e)(8)]. This annual report is compiled and distributed to meet federal law requirements.

State Ombudsman Introduction

Dear Long-Term Care Residents and Stakeholders,

I am pleased to present the 2022 Annual Report of the Tennessee Office of the State Long-Term Care Ombudsman (Office). The Office serves as an independent advocacy service for residents of long-term care facilities in Tennessee. Long-term care ombudsmen (ombudsmen) provide individual advocacy services to long-term care residents while advancing systemic change to improve the lives of all residents.

We have all learned a great deal over the last few years about the devastating impacts of isolation, restricted visitation, poor infection control practices, inadequate staffing, and generally poor care in long-term care facilities. For the first time in recent history, the public had a glimpse into these issues through the media portrayals of the ravages of the pandemic on nursing homes. As the median age of Americans continues to increase and more adults need long-term care services and supports, we must get a better handle on addressing these concerns in a coordinated, thoughtful way.

My office responded to the most complaints for a given year in its recorded history in FFY 2022. The resumption of Tennessee ombudsman regular in-person visits early in calendar year 2022, coupled with a growing demand for services, accounts for the historic number of complaints. The program has been fortunate that supplemental COVID-19 funds were made available to bring temporary ombudsman staff on board to support our small team. These funds made an incredible impact as we faced the increased workload, adding part-time staff to each district ombudsman program, most of which had only one staff ombudsman covering the entire district prior to receiving supplemental funding. To continue delivering services at current levels, the program will need additional funding.

I value stakeholder feedback and meaningful partnerships with all those who care about issues impacting long-term care residents. Together we can improve the quality of care for our state's most vulnerable citizens and deliver on our goal to move the needle on quality in long-term care.



Teresa Teeple

State Long-Term Care Ombudsman

Executive Summary

Overview

- The Tennessee Long-Term Care Ombudsman Program is a federally mandated advocacy program for residents of long-term care facilities. The program consists of a state office housed at the Tennessee Commission on Aging and Disability and 9 district ombudsman programs.
- There are approximately 18 full-time equivalent district ombudsmen serving residents in just under 700 long-term care facilities.
- In federal fiscal year (FFY) 2022, the program responded to 3,703 complaints, the most complaints recorded in a single year in the history of the program.
- Top 3 complaint categories for FFY 2022:
 - Abuse, neglect, and exploitation
 - Care quality
 - Autonomy, choice, and rights
- Ombudsmen resumed regular in-person visits to long-term care residents in early 2022 after providing services mostly virtually during the early years of the pandemic.
- There are too few long-term care ombudsmen in Tennessee to meet the high - and growing - demand for services. As such, funding is one of the primary barriers to providing excellent ombudsman services to Tennessee's long-term care residents.

Recommendations to Strengthen the Tennessee Long-Term Care System

- Bolster Supports for Programs that Respond to Elder Abuse: As Tennessee's older adult population grows, so too will instances of abuse. The state has done far too little to prepare for this inevitability. Having a robust system to respond to allegations and protect the vulnerable is critical.
- Develop a Tennessee Long-Term Care Coordinating Council: A Long-Term Care Coordinating Council must be established with the sole focus of addressing issues pertinent to long-term care residents. The Council would be led by a Chair appointed by the Governor and would bring to light relevant issues to ensure programmatic and policy decisions that will impact residents are not made in a silo.
- Prevent Resident Loss of Housing: Nursing homes need more training on requirements in place to protect residents from being inappropriately and illegally discharged. Discharges to shelters, motels, or other ill-prepared community settings may lead to homelessness.

An Introduction: The Tennessee Office of the State Long-Term Care Ombudsman Program

The Tennessee Long-Term Care Ombudsman Program is an advocacy program for residents of long-term care facilities. It was established under the federal Older Americans Act of 1965 and Tennessee Code Annotated §71-2-109. Every state and territory must have an Office of the State Long-Term Care Ombudsman (Office) that is established by the State Unit on Aging and headed by a full-time State Long-Term Care Ombudsman who directs the program statewide. In Tennessee, the Office is housed within the Tennessee Commission on Aging and Disability (TCAD), Tennessee's State Unit on Aging. The State Long-Term Care Ombudsman is required to:

- Identify, investigate, and resolve complaints made by or on behalf of residents
- Provide information to residents about long-term services and supports
- Ensure that residents have regular and timely access to an ombudsman
- Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect residents
- Analyze, comment on, and recommend changes in laws and regulations pertaining to the health, safety, welfare, and rights of residents

Ombudsman services are free and confidential and are available statewide.

Ombudsman in Action: An ombudsman worked with a resident of a large nursing home who had quadriplegia resulting from a recent accident. The resident asked the ombudsman for assistance convincing the facility to bring a sit-to-stand lift into her room as an aid in teaching her legs to stand again. The ombudsman successfully advocated with staff, and a few months later, the resident reported to the ombudsman that she stood on her own legs for the first time in several years.

Structure of the Office

The Office is comprised of a State Office, housed at TCAD, and nine district ombudsman programs that provide advocacy services at the local level statewide. The State Office contracts with each of the state's nine Area Agencies on Aging and Disability. Five of the nine agencies further contract with local, community-based organizations and other entities to provide ombudsman services. While these local entities are responsible for the personnel management of ombudsmen they house, the State Long-Term Care Ombudsman is responsible for managing all ombudsman activities statewide.

At the time of issuing this report, the Office consists of the State Ombudsman and an assistant and 15 full-time and 6 part-time district ombudsmen who provide services in nearly 700 facilities across the state. The program is also supported by volunteers who increase its reach by visiting facilities and educating residents. During federal fiscal year (FFY) 2022, there were 81 volunteer ombudsmen who contributed 1,675 hours to the program.

FFY 2022: A Year in Review

FFY 2022 was a turning point for Tennessee ombudsmen, as they resumed regular visits to long-term care facilities starting early in calendar year 2022. The impact of COVID-19 on long-term care residents and those that provide services to them, including ombudsmen, cannot be overstated. Used to making in-person visits to investigate resident complaints, ombudsmen had to quickly adjust to a changing landscape in Spring of 2020. The federal government locked down facilities, isolating residents from loved ones, state regulators, and ombudsmen. Executive orders in place in Tennessee also had a great impact on access to residents. In all, residents were often disconnected from their loved ones and communities due to visitation and other restrictions, and some felt they couldn't leave the facility doors. Despite the challenges, ombudsmen continued to provide advocacy services during this time as best they could through mostly virtual means.

Addressing Resident Complaints

Most of an ombudsman's time is spent investigating complaints brought to the ombudsman by, or on behalf of, a long-term care resident, and that was certainly true for FFY 2022. The program responded to the most complaints in its recorded history during this year. When ombudsmen reentered long-term care facilities, they encountered serious issues such as inadequate, poorly trained facility staff, poor infection control practices, ongoing disease outbreaks, and generally poor care. Ombudsmen noted facilities were more regularly employing agency staff at a significant rate, leading to inconsistent care being provided to residents by staff who often didn't know them, their care needs, or preferences well. Residents' family and friends, who were also again making visits to their loved ones, reached out with similar concerns, often asking the ombudsman for help urgently. In all, complaints nearly doubled from 1,932 in FFY 2021 to 3,703 in FFY 2022.

LICENSING LONG-TERM CARE FACILITIES IN TENNESSEE

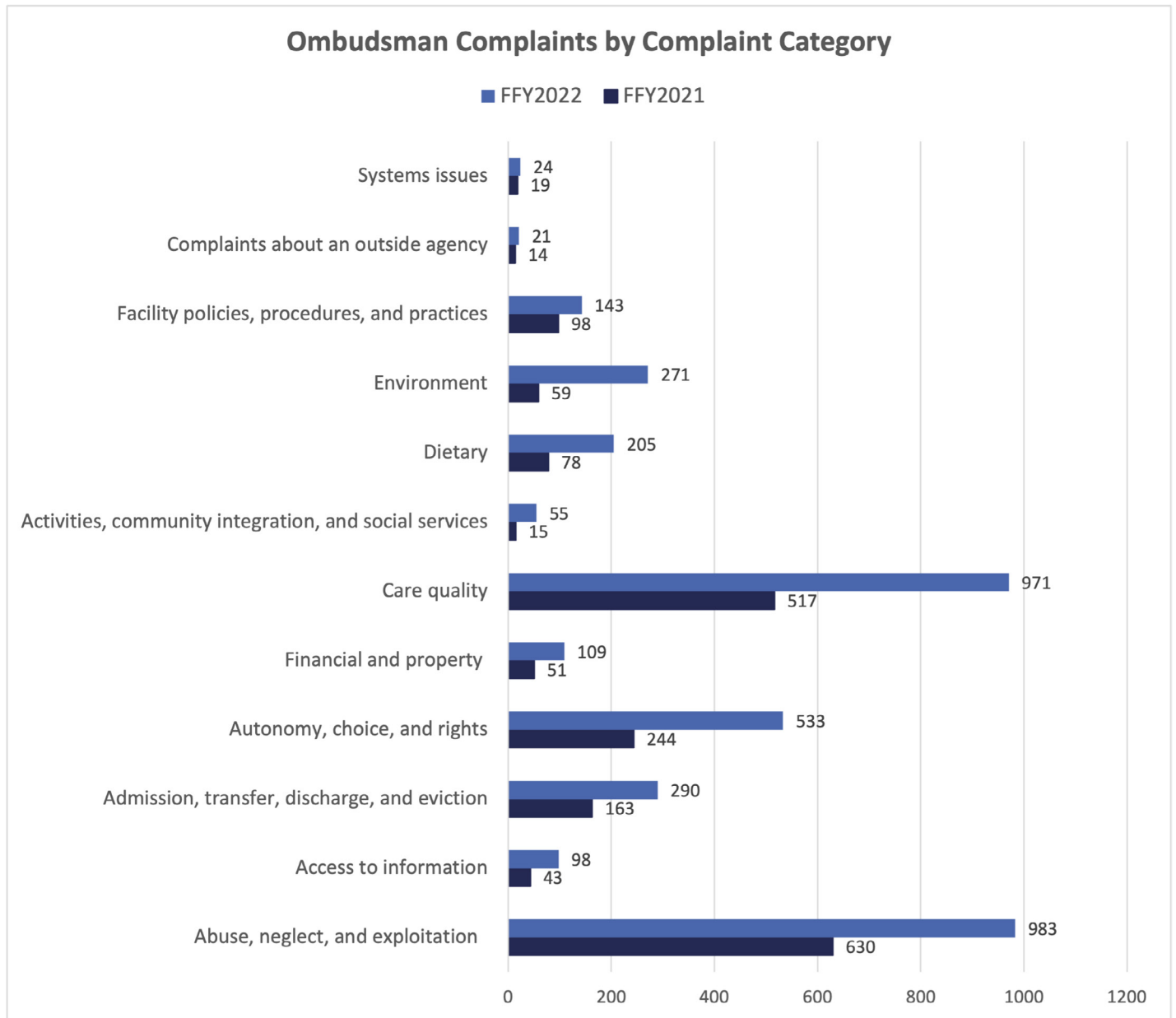
Tennessee is home to residents in 314 nursing homes and 377 residential care communities, including: assisted living facilities, homes for the aged, traumatic brain injury homes, and adult care homes.

The Tennessee Health Facilities Commission is responsible for licensing and certifying these homes across Tennessee. The Commission also completes annual and complaint surveys in long-term care facilities to monitor compliance with state and federal laws and regulations and to ensure resident safety.

Complaints may be filed by calling 1-877-287-0010.

The top 3 complaint categories addressed by ombudsmen in in FFY 2022 were:

- Abuse, neglect, and exploitation
- Care quality
- Autonomy, choice, and rights



Ombudsman Work Supporting Residents and Facility Staff

The Older Americans Act tasks ombudsmen not only with addressing individual complaints, but also with being powerful, consistent voices for residents and support for facility staff. Ombudsmen do this by supporting resident and family councils, helping facility staff address complex issues through a residents' rights and person-centered care lens, and providing education to the broader community about long-term care issues and options. In FFY 2022, ombudsmen made a total of 4,184 visits to long-term care facilities to talk with and educate residents and staff, observe the home, and investigate complaints. They provided information and assistance to 2,543 individuals, acting as a trusted local source of information on topics such as residents' rights, visitation, and how to choose a long-term care facility. Finally, they provided guidance to facility staff members 4,247 times when staff reached out to the ombudsman for assistance.

Ombudsman in Action: A nursing home resident was told he was too ill to attend his daughter's graduation ceremony. The facility refused to assist him with his goal of attending the graduation until the ombudsman got involved. After months of advocacy, the resident was provided a wheelchair that met his needs. He later shared a photograph he took of his daughter graduating.

Barriers of the Tennessee Ombudsman Program

Inadequate Resources to Support the Ombudsman Program

There are too few long-term care ombudsmen in Tennessee to meet the high- and growing- demand for services. As such, funding is one of the primary barriers to providing excellent ombudsman services to Tennessee's long-term care residents. Currently, Tennessee has about 60,000 licensed long-term care beds between nursing homes, assisted care living facilities, residential homes for the aged, adult care homes, and traumatic brain injury homes. The Institutes of Medicine (IOM) report, "Real People, Real Problems: Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act (1995)," recommends a minimum ratio of one paid ombudsman full-time equivalent (FTE) to 2,000 beds, not including the State Long-Term Care Ombudsman. There has been a significant increase in acuity of long-term care residents since this study was published in 1995 resulting in increasing complexity in ombudsman case work. Nevertheless, the IOM report remains the primary tool with which ombudsman programs assess staffing needs. According to the IOM recommendation, Tennessee would need at least 30 ombudsman FTEs to be adequately

staffed. As of the date of issuing this report, Tennessee only has 15 full-time and 6 part-time district ombudsman positions statewide, or around 18 FTEs. Six of those staff are the result of one-time American Rescue Plan funding that has been contracted out to district ombudsman programs for use through September 30, 2023.

Tennessee is unique in that there is no dedicated state funding for the Tennessee long-term care ombudsman program. Nearly every other state and territory, including every state surrounding Tennessee, receives state support. The only state funding expended by the program is for the state ombudsman position, as it is housed within a state agency and uses general administrative funds for personnel costs.

Recommendations

Bolster Supports for Programs that Respond to Elder Abuse

Tennessee must significantly increase support for those programs that protect and serve older and vulnerable adults who are targets for and victims of abuse, neglect, and exploitation (abuse). Those that work in aging services wait anxiously knowing that, as Tennessee's older adult population grows, so too will instances of abuse, and the state has done far too little to prepare for this inevitability. Having a robust system to respond to allegations and protect the vulnerable is critical.

Tennessee Adult Protective Services (APS) is the state's primary tool for receiving allegations of abuse. It needs additional support to better serve an increasing number of Tennesseans. Stakeholders have long noted that, to be most effective, the APS program requires significant statute changes to allow for more investigative authority. Specifically, current APS criteria for elder financial exploitation investigations are too narrow. Recent legislative changes have also limited, hopefully temporarily, APS' ability to respond to cases of self-neglect. A comprehensive review of the growing demand for APS service and of the funds needed must be completed.

The Tennessee Ombudsman Program is unique when compared with other states' ombudsman programs in that complaints regarding abuse make up a significant percentage of overall complaints received and investigated. In FFY 2022, and for several years prior, around 1 in 4 Tennessee ombudsman complaints were about abuse. Many of these complaints are the result of notification to the program by APS of allegations of abuse in long-term care facilities that it receives. In some cases, these allegations may also be investigated by APS, HFC, and others, but each entity has a different role in these investigations. It's important for ombudsmen to continue to investigate abuse allegations appropriate for the program, but it must be noted that, because of the significant number of allegations the program receives, this work severely limits its ability to do other critical work.

Develop a Tennessee Long-Term Care Coordinating Council

Long-term care residents receive services and supports through a web of agencies and providers in Tennessee. Ombudsmen, HFC, APS, the Tennessee Department of Mental Health and Substance Abuse Services, and TennCare, to name just a few, all have a role to play. Currently, there is no mechanism by which these entities meet regularly to discuss and plan for increasing quality, access and supports for long-term care services statewide. Topics such as resident rights, access to benefits, quality of care, and addressing poor performing facilities must be addressed holistically. By providing a regular venue for these partners to engage, coordination, organization, and delivery of services will improve. A Long-Term Care Coordinating Council must be established with the sole focus of addressing issues pertinent to long-term care residents. The Council would be led by a Chair appointed by the Governor and would bring to light relevant issues to ensure programmatic and policy decisions that will impact residents are not made in a silo.

Prevent Resident Loss of Housing

Nursing homes need more training on requirements in place to protect residents from being inappropriately and illegally discharged. Too frequently residents are forced to leave the nursing home they live in against their will or are not allowed to come back after receiving acute care elsewhere, such as a hospital. Discharges to shelters, motels, or other ill-prepared community settings may lead to homelessness. Federal law allows certified nursing homes to discharge residents against their will, but only for six specific reasons^[1]. Even when the facility has a valid reason to discharge a resident it is also required to give the resident timely notice through proper documentation and allow the resident to appeal that decision. Residents often tell ombudsmen that they have not received appropriate notice, including not being aware of or agreeing to the location for transfer in the notice.

Other issues related to involuntary discharge required by federal law include nursing homes neglecting to send the notice to the Office of the State Long-Term Care Ombudsman, neglecting to inform residents of the facility's bed-hold policy, and inappropriately refusing to accept residents back to the nursing home when they can safely move back. It's also common for residents to tell ombudsmen they don't want to complain about poor care because of a fear of retaliation and that they'll be kicked out of the home for complaining. Additional training for nursing homes would reduce the occurrence of involuntary discharge and, in turn, allow residents to express concerns more freely, with less concern for losing their housing.

^[1]The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility; the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility; the safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident; the health of individuals in the facility would otherwise be endangered; the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or the facility ceases to operate.

District 1-First Tennessee

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District 2-East Tennessee

Thomas Kahler

Knoxville, TN

865-691-2551 x4223

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Counties Served: Anderson, Blount, Campbell, Claiborne, Cocke, Grainger, Hamblen, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier & Union

District 3-Southeast Tennessee

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District 4-Upper Cumberland

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Counties Served: Cannon, Clay, Cumberland, DeKalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, Van Buren, Warren & White

District 5-Greater Nashville

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Counties Served: Cheatham, Davidson, Dickson, Houston, Humphreys, Montgomery, Robertson, Rutherford, Trousdale, Stewart, Sumner, Wilson, Williamson

District 6-South Central

Vacant – Contact State Ombudsman

Mount Pleasant, TN

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Counties Served: Chester, Decatur, Hardeman, Hardin, Haywood, Henderson, McNairy & Madison

District 9-Memphis-Delta

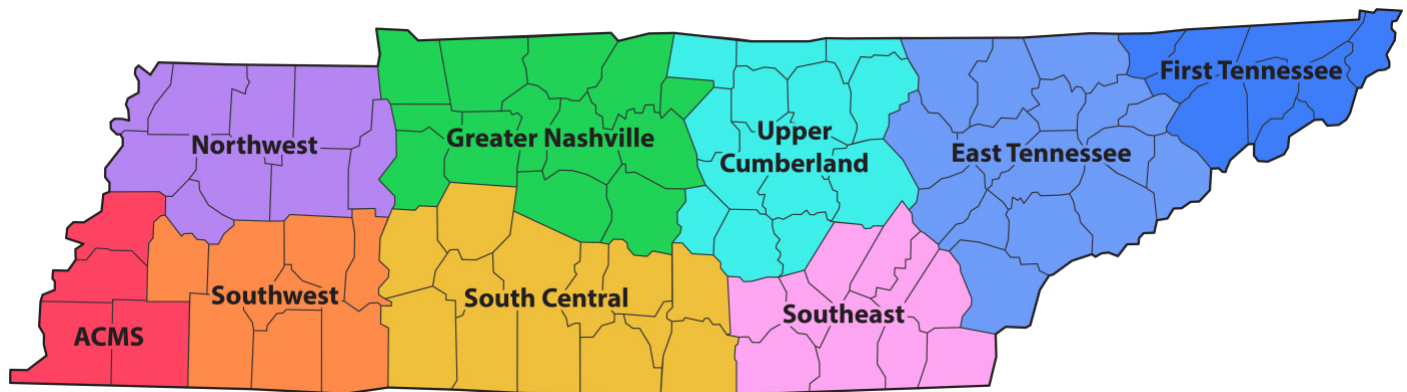
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