

# Tennessee Long-Term Care Ombudsman Program

CMP Special Topics Webinar Series  
**Thursday, August 26, 2021**



# About Your Speaker...

- Hometown: Memphis, TN
- University of Tennessee- Knoxville alumna
- MPH from Tennessee State University (Nashville)
- Certified Dementia Practitioner and PAC Coach certified (Teepah Snow's program)
- Former Manager at Alzheimer's Association
- Advisory Council for South Central AAAD & Volunteer Ombudsman (2013-2016)
- Featured on NPT's Aging Matters series
- Recently testified before Senate Finance Committee during "Tragedy of COVID" hearing



# In this presentation, we will cover:

- The Basics of the Ombudsman Program
- The LTCOP-- by the numbers & geography
- Resident Rights in Long-Term Care
- COVID-19: Major Takeaways & case examples
- Volunteer Ombudsman Representatives (VORs)
- Preparing for the 3rd wave of COVID-19





# What is an Ombudsman?

- Swedish for the word “representative of the people,” we are ADVOCATES!!
- By the bedside advocates for residents of licensed long-term care facilities.
- Work to ensure **residents’ rights**-- done through *resident-directed activities*
- Resolve concerns for residents involving abuse, neglect, & financial exploitation.
- Collaborate with a myriad of organizations & agencies to resolve concerns:
  - Centers for Medicare & Medicaid Services (CMS)
  - Department of Health- Healthcare Facilities
  - Adult Protective Services (APS)
  - TennCare & their Commissioner’s Designee
  - Legal Aid & other Legal Assistance programs
  - Collaborative Response to Elder and Vulnerable Adult Abuse (CREVAA)

# About the Tennessee Long-Term Care Ombudsman Program-- **BY THE NUMBERS**

- 16 FT staff, 1 PT staff +/-200 volunteers work for our program throughout the state
- **Count of licensed long-term care facilities in the state of Tennessee:**
  - **315 SNFs, or skilled nursing facilities commonly known as ‘nursing homes’**
  - 415 ACLFs, or Assisted Care Living Facilities, known as ‘assisted livings’
  - 100+ RHAs, or Residential Homes for the Aged
- 61,000+ : TOTAL NUMBER OR RESIDENTS IN **LICENSED** LONG-TERM CARE in the state of TN as of our ACL in January 2021
- The Tennessee LTCOP is housed at TCAD, or **Tennessee Commission on Aging and Disability** and works statewide through AAADs & other contracted agencies.



# Tennessee District LTCO Program

## District 1-First Tennessee

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## District 2-East Tennessee

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## State Long Term Care Ombudsman

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## What do I do if I see a problem with the care my loved one is receiving?

1. Contact your District Long-Term Care Ombudsman (DLTCO) Program to begin a complaint investigation for a resident in a licensed long-term care facility.
2. Be sure that the appropriate person is making contact- resident, POA, Public Guardian, conservator, etc.
3. Tell the DLTCO for your area the concern(s) and provide them with consent.
4. The DLTCO will work to resolve concerns involving the rights of residents included but not limited to: neglect, abuse, sexual exploitation, facility-initiated discharges, Medicare/Medicaid issues (if possible). Feel free to email me if issues persist!!

**Residents of Long-Term Care  
Facilities have RIGHTS!!**  
*It is their home after all...*





## Right to a Dignified Existence

- Be treated with consideration, respect, and dignity, recognizing each resident's individuality
- Freedom from abuse, neglect, exploitation, and misappropriation of property
- Freedom from physical or chemical restraints
- Quality of life is maintained or improved
- Exercise rights without interference, coercion, discrimination, or reprisal
- A homelike environment, and use of personal belongings when possible
- Equal access to quality care
- Security of possessions



## Right to Self-Determination

- Choice of activities, schedules, health care, and providers, including attending physician
- Reasonable accommodation of needs and preferences
- Participate in developing and implementing a person-centered plan of care that incorporates personal and cultural preferences
- Choice about designating a representative to exercise his or her rights
- Organize and participate in resident and family groups
- Request, refuse, and/or discontinue treatment



## Right to be Fully Informed of

- The type of care to be provided, and risks and benefits of proposed treatments
- Changes to the plan of care, or in medical or health status
- Rules and regulations, including a written copy of residents' rights
- Contact information for the long-term care ombudsman program and the state survey agency
- State survey reports and the nursing facility's plan of correction
- Written notice before a change in room or roommate
- Notices and information in a language or manner he or she understands (Spanish, Braille, etc.)





## Right to Raise Grievances

- Present grievances without discrimination or retaliation, or the fear of it
- Prompt efforts by the facility to resolve grievances, and provide a written decision upon request
- To file a complaint with the long-term care ombudsman program or the state survey agency



## Right of Access to

- Individuals, services, community members, and activities inside and outside the facility
- Visitors of his or her choosing, at any time, and the right to refuse visitors
- Personal and medical records
- His or her personal physician and representatives from the state survey agency and long-term care ombudsman program
- Assistance if sensory impairments exist
- Participate in social, religious, and community activities



## Rights Regarding Financial Affairs

- Manage his or her financial affairs
- Information about available services and the charges for each service
- Personal funds of more than \$100 (\$50 for residents whose care is funded by Medicaid) deposited by the facility in a separate interest-bearing account, and financial statements quarterly or upon request
- Not be charged for services covered by Medicaid or Medicare





## Right to Privacy

- Regarding personal, financial, and medical affairs
- Private and unrestricted communication with any person of their choice
- During treatment and care of personal needs



## Rights During Discharge/Transfer

- Right to appeal the proposed transfer or discharge and not be discharged while an appeal is pending
- Receive 30-day written notice of discharge or transfer that includes: the reason; the effective date; the location going to; appeal rights and process for filing an appeal; and the name and contact information for the long-term care ombudsman
- Preparation and orientation to ensure safe and orderly transfer or discharge
- Notice of the right to return to the facility after hospitalization or therapeutic leave





# COVID-19 and the Tennessee LTCOP

# Major Issues during COVID-19

## **DLTCOs worked through a lot of the following:**

- Unethical Discharges
- Facility-Initiated Hospice
- Explaining Visitation Restrictions to Families
- Economic Impact & Stimulus Check Issues
- Dealing with continued low quality of care and an unlicensed facility...
- Practically Applying QSO-20-39
- Advocating for compassionate care visits
- Dealing with upcharges/COVID charges in ALs
- Vaccination Conversation

# Thomas Kahler, J.D.



## Knoxville/Knox Co. and surrounding counties



Thomas Kahler has been the District 2 Long-Term Care Ombudsman (DLTCO) for East TN for four years--encompassing sixteen counties and serving approximately 11,500 residents in licensed long-term care facilities. Thomas grew up in Norris TN and attended East TN State University and the University of TN where he obtained a Bachelor's Degree. A life altering event led him to pursue a higher level of education, and he received his Juris Doctor from the University of TN – College of Law in 2000. After law school, Thomas chose to work in the nonprofit sector focusing on social justice issues with particular emphasis on seniors and people with disabilities.

Thomas is happily married to Jessica Christine Kahler; they are currently foster parents of two young children. In their free time they enjoy travel, photography, exploring new restaurants, music of all types including live concerts, bicycling, kayaking, and gardening. Some of those activities weren't necessarily an option in the era of COVID-19, so they've spent much of the past 15 months remodeling their house.

## Dealing with concerns of care quality

- Care quality cases were difficult to work because of the inability for immediate access
- Workforce shortages throughout the state led to diminished quality of care particularly in rural areas of our state
- We learned about varying quality of care from families, skilled care residents, facility staff, and residents in skilled nursing facilities.
- For IJs, or immediate jeopardies, we alerted DOH. For lower priority complaints, we issued formal complaints with the Tennessee Regional Office administrators or through completing an online form.
- For many cases, it meant empowering residents and families to stay on facility staff or advocating for compassionate care visits

# Melinda Lunday



## Nashville/Davidson Co. and surrounding counties



Melinda is the District Long-Term Care Ombudsman Program Ombudsman in the Middle Tennessee area. She is a graduate of Western Kentucky University, where she earned a Bachelor's Degree, majoring in Sociology and minoring in Criminology and Psychology. She received a certification in Foundation in Aging and Disabilities through the CADER program at Boston University School of Social Work.

Melinda began part-time with the Long-Term Care Ombudsman Program in October 2016. Melinda has trained, recruited, and retained a core group of approximately thirty-five volunteers. In September 2020, Melinda stepped into the role of Program Director, while continuing to work in a Volunteer Coordinator capacity. During the Covid outbreak, she enjoyed gardening, and watching Netflix with her three beautiful children: specifically, the Marvel Universe of superheroes.

## Dealing with COVID-19 facility outbreaks

- Started COVID-19 off with a bang; received a very vague note from a facility in Sumner Co. in reference to COVID-19
- Turned out to be one of the largest (earlier) outbreaks in the country after Washington State and New York
- Maintained open communication with admin
- Requesting face sheets was the only method to track residents that had been cohorted as allowed by CMS waiver;
- Used ER logs, when possible, but they aren't due til the following 20th of the month.

# Kimberly Boyd



## Northwest TN counties (More rural area)



Kim Boyd is the District Long Term Care Ombudsman for District 7, rural Northwest Tennessee. Kim has been the Northwest's DLTCO since 2017. Prior to becoming the Northwest's DLTCO, Kim worked for over 25 years in capacities serving and advocating for children and individuals with intellectual and developmental disabilities. In 2019, she received the West Tennessee Legal Services "Steve X Award for Outstanding Work in Promoting Justice for All."

Kim is a graduate of the University of Tennessee at Martin. She has one 11-year-old son. In her spare time, she enjoys volunteering, spending time outside, working on arts and crafts and traveling with her son. To destress during COVID-19, Kim spent time in her garden and planning her fabulous, new backyard.

## Dealing with COVID-19 surcharges and cohorting of residents

- Issues arose earlier on in first wave of COVID-19
- ALCF family members made contact about billing discrepancies and additional costs
- Resolved by warning ALCFs about price gouging & "fair pricing" policies
- SNF residents and families complained about being moved further NW due to CMS waivers that allowed cohorting
- Resolved, where possible, by educating family on waivers and providing reassurance of return
- Concerns on economic impact/stimulus and financial exploitation; FAQ and allowable spending

# Zev Samuels, MSW



## Memphis/Shelby Co. and surrounding areas



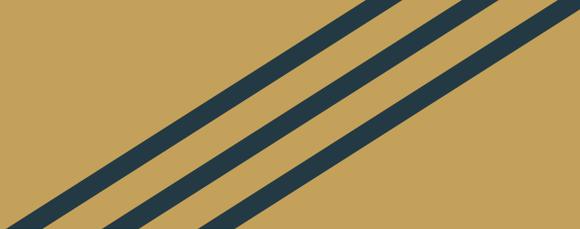
Zev Samuels is the District 9 Long Term Care Ombudsman, serving Fayette, Lauderdale, Shelby, and Tipton Counties. He has held this office for 7 years. Zev has an M.S.W. from the Wurzweiler School of Social Work in New York, with a special focus on Social Group Work. In 2019, Zev was awarded Tennessee Social Worker of the Year by NASW-TN. Zev and his wife, Sherri, live in Memphis; and they have 3 adult children. Zev enjoys finding ways to make a difference. The following quote has been essential for Zev as he has managed the stressors of the pandemic: *"Never, ever give up on a person. This is true of anyone; but most importantly, never give up on yourself!"*

## Dealing with Unethical Facility Discharges

- Involuntary Discharges were most challenging issue during visitation restrictions from COVID-19.
- Cases include individuals who were sent to hospitals/behavioral health hospitals with no opportunity to return to the facilities.
- Without 30 Day Notices of Involuntary Discharge, residents had no way to appeal or to otherwise challenge these discharges.
- Many facilities would regard it as 'cohorting' when it was in fact 'dumping'
- Residents with Medicaid CHOICES benefits risked losing them; and families were at a loss to advocate for residents, as communication between facilities and families were often severely disrupted.

# Methods used by TN DLTCOs during COVID-19

- Use of Tennessee **Standards of Care** in Skilled Nursing Facilities to determine eligibility for visits when compassionate care requests were pushed back on or refused by facility.
  - *Use of the Non-Interference Clause to get progress notes that backed that information*
  - *For compassionate care cases: we typically compared previously documented weight and/or BIMS (or Brief Interview for Mental Status) score to justify need.*
- Communication with the three (3) **DOH Healthcare Facilities Tennessee Regional Office (TRO)** administrators and their staff for more serious complaints.
- Rapport with **Tennessee Healthcare Association (THCA)**, or our nursing home provider association that was a repository of corporate contacts during compassionate care cases.
- Use of **info from EDs and discharge nurses** to confirm COVID in facilities and \*TRY\* to prevent hospital dumping due to unethical facility-initiated discharges.
- Assurance/Scheduling of **virtual care plan conferences** for major issues like skin tears, sepsis, missed therapy & dialysis, and facility-initiated hospice.
- Use of [QSO-20-39NH](#) and [QSO-21-14](#) to advocate on behalf of residents during COVID



# Volunteer Ombudsman Representatives, or VORs



# Volunteer Program Requirements

## Becoming a VOR

- Application completed by caring adult over 21 with reliable transportation
- Background & Elder Abuse Registry Check
- Eight (8) Hours of Asynchronous Learning w/ Exam
- 10-16 Hours of Classroom Training (Live or Virtual)
- 1-3 Hours of Shadowing in SNF Facility
- Certification by SLTCO
- Receipt of badge, VOR materials, and PPE\*
- VOR is registered in database & assigned facilities

## Remaining a VOR

- Fulfill the time commitment and reporting requirements
- Monthly Training/Meeting within the District
- Bi-annual meeting held statewide\*
- Remain free of conflicts of interest
- Expect to spend 1-3 hours per week doing this work for a 6-12 month commitment



Applying lessons learned heading into  
the third wave of COVID...



# Involuntary Discharges, or IVDs of Residents

- Any transfer or discharge of a resident that is *initiated by a Medicaid-certified nursing facility or skilled nursing facility* is governed by **42 CFR § 483.15**-- requiring an Involuntary Discharge form & proper notification:  
<https://www.tn.gov/content/dam/tn/tennCare/documents/NFInvoluntaryDischargeNotice.pdf>
- IVDs need to be done in a **safe, secure and orderly** fashion
  - Hospitals, Geri-psychs, and/or Behavioral Treatment centers are **NOT** appropriate settings for an Involuntary Discharge. These transfers can, however, be reported in the Monthly Transfer log due on the 21<sup>st</sup> of each month.
  - “Notice given to” information should be filled out completely on page 3\*.
  - Resident Representatives should be properly notified*** prior to informing the Office of the State Ombudsman, District Ombudsman for your area, TennCare Commissioner’s Designee, and the Department of Health (State Survey Agency Director).

# Visitation in LTCF

- Visit restrictions during outbreaks in facilities and/or during **high** county COVID-19 test positivity rates should be communicated to residents and families.
- Compassionate Care vs. Regular visitation
- –**Per CMS, compassionate care visits and regular visits are not the same thing.** Compassionate care for residents is mandatory despite COVID-19 infections in the building **and/or** a resident being on transmission-based protocol.
- –**Reminder:** “ ‘Compassionate care situations’ does not exclusively refer to end-of-life situations, reference [QSO-20-39NH.](#)”
- •Disallowing regular visitation (*without a substantiated outbreak and/or high county positivity rate*) raises concerns of staffing insufficiency and must be reported to DOH per CMS.

# Thank You!



QUESTIONS, COMMENTS, CONCERNS, CRIES?!