

# **O**mbudsman **LONG TERM CARE** RESIDENTS' ADVOCATE

GEORGIA LONG-TERM CARE  
OMBUDSMAN PROGRAM

**POLICIES AND PROCEDURES**

**May 2004**



**Office of the State Long-Term Care  
Ombudsman**

Division of Aging Services

## 400. Conflicts of Interest

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How to use this Chapter — This Chapter provides guidance in: 1) identifying and defining actual and potential conflicts of interest, 2) avoiding conflicts of interest, 3) remedying conflict where appropriate, and 4) describing consequences of operating a Long-Term Care Ombudsman Program with an unremedied conflict of interest. When a conflict has been identified under II-401, the reader should use the procedures set forth in II-402 to determine whether the conflict can be sufficiently remedied to permit the provision of ombudsman services.

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### POLICY

The organizational placement of the Long-Term Care Ombudsman Program and the individuals who carry out the duties of the Program must be free from conflicts of interest.

### PROCEDURES

#### 401. Identifying the Conflict

##### 401.1 Definition of conflict of interest

- a. A conflict of interest exists in the Long-Term Care Ombudsman Program (LTCOP) when other interests intrude upon, interfere with, or threaten to negate the ability of the LTCOP to advocate without compromise on behalf of long-term care facility residents. Types of conflict of interest include:
  - i) **conflicts of loyalty**— incentives, often related to financial or employment considerations, that shape ones judgment or behavior in ways that are contrary to the interest of residents;
  - ii) **conflicts of commitment**— goals or obligations that direct ones time and/or attention away from the interest of residents; and
  - iii) **conflicts of control**— limitations or restrictions that effectively foreclose one’s ability to take actions to advocate for the interest of residents.

#### 401.2 Organizational conflicts

Conflicts arising from organizational location include, but are not limited to, LTCOP placement in an agency which:

- a. has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;
- b. provides long-term care services, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;
- c. operates programs with responsibilities conflicting with LTCOP responsibilities. Examples of such responsibilities include developing and carrying out care plans and serving as guardian over long-term care residents;
- d. has governing board members with ownership, investment or employment interest in long-term care facilities; and
- e. has direct involvement in the licensing or certification of a long-term care facility or long-term care services.

#### 401.3 Individual ombudsman conflicts

Conflicts for a long-term care ombudsman (LTCO) include, but are not limited to, the following:

- a. employment of an individual or a member of his/her immediate family within the previous year by a long-term care facility in the service area or by the owner or operator of any long-term care facility in the service area;

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- a. employment of an individual or a member of his/her immediate family within the previous year by a long-term care facility in the service area or by the owner or operator of any long-term care facility in the service area;

- i. serving residents of a facility in which an immediate family member resides; or
  
- j. participating in activities which:
  - i) negatively impact on the ability of the LTCO to serve residents,  
or
  - ii) are likely to create a perception that the LTCO's primary interest is other than as a resident advocate (see II 403.3, below).

## 402. Remedying Conflict

### 402.1 General

#### a. **notification of the SLTCO**

Where an actual or potential conflict of interest within the LTCOP has been identified, the SLTCO shall be notified. All agents of the Department of Human Resources, area agencies on aging (AAAs), provider agencies, and LTCOs have a duty to notify the SLTCO of any actual or potential conflict of interest of which they have knowledge.

- b. The SLTCO shall determine whether appropriate actions may be taken to sufficiently remedy the conflict. A conflict can be sufficiently remedied only where the existence of the conflict does not interfere with any duties of the LTCOP and where the conflict is not likely to alter the perception of the LTCOP as an independent advocate for residents.

### 402.2 Remedying organizational conflicts

Where organizational conflicts have been identified, the following steps shall be taken where the conflict can be sufficiently remedied:

- a. A written remedial plan shall be developed within thirty (30) calendar days of identification of the conflict to the SLTCO.
- b. The remedial plan must identify the conflict and provide assurances which shall minimize to the greatest extent possible the negative impact of the conflict on the LTCOP. Examples of such assurances could include:
- i) The LTCOP will investigate complaints in an unbiased manner and independently determine actions to be taken in their resolution.

- ii) No agency employee or governing board member with a conflict of interest will be involved with or influence any decision to hire or terminate the employment of a LTCO.
  - iii) Governing board members of the provider agency or AAA who have a conflict of interest:
    - A) must disclose the conflict to the governing board and to the SLTCO;
    - B) may have no involvement with LTCO activities concerning the entity which is the source of the conflict; and
    - C) must abstain from voting on issues related to the operation of the LTCOP.
  - iv) The agency's policies and procedures adequately set forth procedures to remedy conflicts of interest and ensure that the LTCOs can fulfill their duties without interference.
  - v) A memorandum of agreement exists between the LTCOP and another program which provides services with conflicting responsibilities. Such a memorandum must adequately set forth the roles, responsibilities, and appropriate working relationships of the respective programs.
- c. The remedial plan must be mutually agreed upon and signed by the agency in which the conflict exists and the SLTCO. If either party cannot agree to the plan, the conflict has not been sufficiently remedied.

#### 402.3 Remediating individual ombudsman conflicts

Where individual conflicts have been identified, the following steps shall be taken where the conflict can be sufficiently remedied:

- a. **development of a written remedial plan**
  - i) Where the individual is an applicant for a position as a LTCO, a plan shall be developed before the individual is hired for the position.

- ii) Where the individual is an applicant for certification as a LTCO volunteer, a plan shall be developed before the individual takes any actions on behalf of the LTCOP.
  - iii) Where the individual is a LTCO staff or volunteer, a plan shall be developed within thirty (30) calendar days of identification of the conflict to the SLTCO.
- b. The remedial plan must identify the conflict and provide assurances which shall minimize to the greatest extent possible the negative impact of the conflict on the LTCOP. An example of such an assurance could include:
  - i) prohibiting the LTCO with a conflict of interest from serving the residents of the facility with which he/she has a conflict and arranging for another staff LTCO to serve those residents. Where appropriate, this arrangement could be time-limited.
- c. The remedial plan must be mutually agreed upon and signed by the provider agency, the LTCO or applicant with the conflict of interest, the LTCO Coordinator, if applicable, and the SLTCO.
- d. Volunteer Visitors are not permitted to serve residents in facilities with which they have a conflict of interest. The SLTCO may delegate to an LTCO Coordinator the authority to:
  - i) consider the conflicts of interest of an individual who wishes to serve as a Volunteer Visitor; and
  - ii) determine whether conflicts exist which may impede the ability of the Volunteer Visitor to fulfill the duties of that position or may alter the perception of the LTCOP as an independent advocate for residents. If such a conflict exists, the individual cannot serve as a Volunteer Visitor.



403. Procedures to Avoid Conflicts of Interest

403.1 Persons seeking certification as ombudsmen

a. **identification of the conflict**

The provider agency shall screen all persons seeking certification as LTCO staff or volunteers to identify any actual or potential individual conflicts of interest. Upon request by the SLTCO, the provider agency shall submit evidence of such screen to the SLTCO. The SLTCO may periodically request the provider agency to perform a conflict of interest screen of currently certified LTCO staff or volunteers.

b. **disclosure of the conflict**

All persons seeking employment or certification as LTCO staff or volunteers shall disclose to the provider agency all information relevant to past employment, membership, or interests that may affect, or could reasonably be expected to affect, that individual's ability to carry out duties of a LTCO without conflicting interest.

403.2 Persons seeking to become Volunteer Visitors

a. **identification of the conflict**

The LTCO Coordinator shall screen all persons applying to become Volunteer Visitors to identify any actual or potential individual conflicts of interest.

b. **disclosure of the conflict**

All persons applying to become Volunteer Visitors shall disclose to the Ombudsman Coordinator all information relevant to past employment, membership, or interests that may affect, or could reasonably be expected to affect, that individual's ability to carry out duties of a Volunteer Visitor without conflicting interest.

### 403.3 Ombudsman involvement in activities

In determining whether LTCO participation in community groups, professional associations, or other activities constitutes a conflict of interest, the following questions shall be considered:

- a. Will the LTCOP benefit from LTCO involvement in this activity?
- b. Will the LTCO be able to represent and assert the views of long-term care residents in this activity?
- c. Will the role of the LTCO in the activity benefit residents?
- d. How will participating in the activity affect the public perception and the residents' perspective of the LTCOP?
- e. Will the LTCO be put in a position of participating in a decision about a resident without the resident's involvement or permission?

404. Failure to Identify or Remedy a Conflict of Interest

- a. Failure on the part of a LTCO, provider agency, or administrative agency to identify and report to the SLTCO a known conflict of interest shall be sufficient grounds for refusal to designate or de-designation of the LTCOP or the LTCO (II-200, above).
- b. Existence of an unremedied conflict of interest shall be sufficient grounds for the de-designation of the LTCOP (II-202, above).
- c. Failure on the part of a LTCO to identify and report to the SLTCO a known conflict of interest shall be sufficient grounds for the withdrawal of the designation of the LTCO (II-204, above).

**REFERENCES** OAA § 712(a)(5)(C)(ii), (f); proposed rule 45 CFR § 1327.27; IOM Report, pp. 101-127