



**Note: Effective July 1, 2016 the Administration for Community Living (ACL) consolidated their regulations into one subchapter resulting in the LTCOP rule number changing from 45 CFR 1327 to 45 CFR 1324. We are in the process of revising our resources to reflect that change. Information about the consolidation is available [here](#).*



2015 Long-Term Care Ombudsman Rule: Guidance to Strengthen Services to Long-Term Care Residents

N4A Webinar
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Presenters

Becky A. Kurtz, JD

Director, Office of Long-Term Care Ombudsman Programs

at

Administration for Community Living

Lori Smetanka, JD

Director, National Ombudsman Resource Center

at

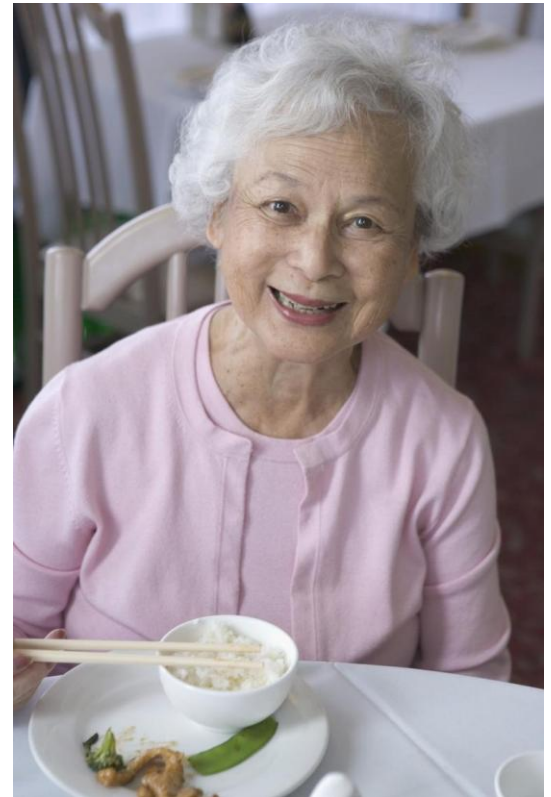
The National Consumer Voice for Quality Long-Term Care

Administration for Community Living

(includes Administration on Aging)

Mission:

Maximize the independence, well-being, and health of older adults, people with disabilities, and their families and caregivers.



LTC Ombudsman Program Description

- The Older Americans Act (OAA) establishes the Long-Term Care (LTC) Ombudsman program
- The program is a person-centered consumer protection service that resolves problems and advocates for the rights of individuals.
- The mission: to maximize the independence, well-being, and health of individuals residing in:
 - Nursing facilities
 - Assisted living
 - Board and care
 - Other similar adult care facilities.



LTC Ombudsman Program Origins



- **1970s**--Nursing Home Ombudsman program created as part of President Nixon's initiative to improve conditions and respond to widespread reports of resident abuse in nation's nursing facilities.
- **1980s**--LTC Ombudsman program expanded to board and care and similar adult care facilities (widely interpreted to include assisted living).
- **1992**--LTC Ombudsman program became part of Title VII of OAA, the "Elder Rights" Title.
- **2000**--Assisted living expressly added to the definition of "long-term care facility" in OAA.

Since inception:

- Envisioned as an independent entity able to represent consumer interests.
- No regulations to fully implement the program and provide consistent level of consumer protection across states.

Law =

Older Americans Act

Public Law 109-365

42 U.S. Code Chapter 35

Regulation =

45 CFR Part
1321
OAA Title III

45 CFR Parts
1326 and 1328
OAA Title VI

45 CFR Part 1324
OAA Title VII

Guidance;
examples =

Program
Instructions

Letters to
states

Frequently
Asked
Questions
(FAQs)

Overarching ACL Goals re: LTCO Rule

- High quality ombudsman services for residents
 - Credible, person-centered problem-solvers with and for residents,
 - Effective, astute advocates for resident-centered systems change in long-term services and supports.
- Provide clarity to provisions of the Older Americans Act,
 - especially those that are uniquely applied to the LTC Ombudsman program
 - Provide flexibility for States in their establishment of the Program,
 - balanced with the need for consumers to have access to consistent, quality ombudsman services



Need for rulemaking

- Difficult for ACL to determine state compliance in carrying out basic program requirements
- Congressional inquiries
- DHHS Inspector General reports
- Institute of Medicine: Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act (1995):
 - “Identified considerable barriers to effective performance that the ombudsman programs encounter, including . . . :
 - Structural conflicts of interest that limit the ability to act; and
 - Uneven implementation within and across states.”
- OAA requires ACL to promulgate regulations related to conflict of interest provisions
- Media attention to LTC Ombudsman program deficits
 - E.g., USA Today/Kaiser Health News articles (January 2013):
 - “Long-Term Care Ombudsmen Face Challenges to Independence”
 - “Ombudsmen Face Obstacles from State Officials”



Other Considerations

- Administration on Aging worked with stakeholders (2011-2012) to develop consensus around areas of needed guidance.
- Operationalizes OAA provisions which are uncharacteristic of ways state units on aging (SUAs) and area agencies on aging (AAAs) operate other OAA programs.
- Examples:
 - Ombudsman responsibility to designate representatives and local Ombudsman entities,
 - Stringent disclosure limitations,
 - Conflict of interest requirements,
 - Ombudsman responsibility to perform systems advocacy functions.

Analyzing the Burden to States

- Some states already in compliance with Final Rule
- For others, will require change in:
 - Organizational structure and/or
 - State practices, policies, regulations or laws
- Rule limited to areas of greatest inconsistency/need for regulatory guidance to States -- *Very few new requirements beyond OAA.*
- No new information collection or recordkeeping requirements

NOTE: Rule does propose a revision to the National Ombudsman Reporting System (NORS) regarding steps taken to address organizational conflicts of interest; plan to include within comprehensive NORS Revision proposal in 2015
- States already required by OAA to develop policies and procedures for the operation of the LTC Ombudsman program; Rule provides clarifications to this existing requirement.



Comments on Notice of Proposed Rulemaking (NPRM)

- 85 unduplicated comments received during public comment period
- No commenter objected to publication of the rule or indicated no need for rule
- Many indicated the need for and appreciation for clarity and interpretation of OAA provisions

State Unit on Aging is ACL's grantee

- ACL's authority to administer State LTC Ombudsman Programs program is through Older Americans Act (OAA) grants to State Units on Aging (SUAs)
- ACL holds the SUA accountable for program compliance
 - even if SUA doesn't house the State LTC Ombudsman or provide LTC Ombudsman services directly
- LTCOP Rule (45 CFR Part 1324) is part of OAA grant compliance requirements.

Final Rule Table of Contents

1321.11(b) State agency policies. (revises existing rule)

New Rule

1324.1 Definitions.

1324.11 Establishment of the Office of the State Long-Term Care Ombudsman.

1324.13 Functions and responsibilities of the State Long-Term Care Ombudsman.

1324.15 State agency responsibilities related to the Ombudsman program.

1324.17 Responsibilities of agencies hosting local Ombudsman entities.

1324.19 Duties of the representatives of the Office.

1324.21 Conflicts of interest.

Terms Used in OAA and Rule

- **Ombudsman** -- For consistency with the OAA, Rule uses the term “Ombudsman” to specifically refer to one individual: the State LTC Ombudsman.
- **Representatives of the Office** -- Used to describe staff and/or volunteers designated by the Ombudsman to perform LTC Ombudsman program duties.
 - Rule does not use following terms: “local ombudsman” or “volunteer ombudsman.”
 - Many States and other stakeholders commonly use the word “ombudsman” to describe staff and volunteers at every level of the program. This Rule does not require a change in the usage of those terms.

Terms Used in OAA and Rule (continued)

Local Ombudsman entity – Entity designated by the Ombudsman to carry out LTC Ombudsman program duties

- Used in a decentralized program model, including:
 - Within a AAA;
 - AAA may contract with a non-profit; or
 - State-level Office may contract directly with a non-profit
- Many States and other stakeholders commonly use: “local (regional) Ombudsman program (office)” to describe operations housed at a AAA or local/regional level.
- This Rule does not require a change in the usage of those terms.



Today's Areas of Focus

1. The Ombudsman and local Ombudsman entities
 - Designation/de-designation of local Ombudsman entity
 - Monitoring performance
 - Coordinating with SUA and AAAs

2. The Ombudsman, local Ombudsman entities and representatives of the Office
 - Designation/de-designation vs. hiring/firing
 - Programmatic vs. personnel oversight
 - Communications, training, and technical assistance

3. Organizational Conflicts of Interest
 - How conflicts impact local Ombudsman entities

1. The Ombudsman and local Ombudsman entities

Functions and responsibilities of Ombudsman include:

Designation, and refusal, suspension, or removal of designation, of local Ombudsman entities

OAA – 712(a)(5)

Rule – 45 CFR 1324.13(c)

Rule requires:

- Establishing policies for Ombudsman designation of local Ombudsman entities
 - Must be in public or non-profit private entities (often AAAs)
- Review and approval of plans or contracts governing local Ombudsman entity operations (includes area plans)
 - Coordination with SUA and AAAs = important practice
- Monitoring of local Ombudsman entities on a regular basis



Designation of Entities: A Look at Policies/Procedures

1. Eligibility requirements

The type of organization or agency is eligible to operate a local ombudsman entity?

2. Application process

The process to request and accept proposals for local ombudsman entity operation

3. Required contract provisions

Elements to be included in the contract between the host and the designated entity

4. Criteria and process for de-designation

<p style="text-align: center;">Eligibility</p> <ul style="list-style-type: none"> • Public/nonprofit • Not licensing or certifying LTCFs • Not a provider association or affiliate • No financial interest in LTCF • Capable of providing assistance in service area 	<p style="text-align: center;">Application</p> <ul style="list-style-type: none"> • RFP process (non-AAA) with requirements • Role of SLTCO in reviewing applicants • AAA's application for local ombudsman entity
<p style="text-align: center;">Contract</p> <ul style="list-style-type: none"> • Staffing pattern • Service area • Assurances - laws/regs/policies • Training • Monitoring • Records/information/reporting • Termination • Continuation of service 	<p style="text-align: center;">De-Designation</p> <ul style="list-style-type: none"> • Reasons • Notification • Appeal rights • Continuation of service • Handling of records • Handling of LTCO equipment



Monitoring LLTCOs: A Look at Policies/Procedures

1. Process for monitoring

The process to be followed for monitoring local entities

2. Areas Reviewed

What's looked at during the monitoring process

Process for Monitoring

- How often
- Areas reviewed
- Notification
- Reporting of results/findings
- Process for response

Areas Reviewed

- Case review
- Data
- Fiscal review
- Contractor agreements
- Assurances
- Staff survey
- Training
- Response to complaints
- Volunteer recruitment
- Resident/family council participation
- Community education
- In-service training
- Shadowing

2. The Ombudsman, local Ombudsman entities, and representatives of the Office

Functions of Ombudsman include:

Designation, and refusal, suspension, or removal of designation, of representatives of the Office (i.e. staff or volunteers)

OAA – 712(a)(5)

Rule – 45 CFR 1324.13(c)-(d)

Rule requires:

- Establishing policies for Ombudsman training and designation of representatives of the Office
- Agencies hosting local Ombudsman entities are responsible for the **personnel management**, but not the programmatic oversight, of representatives of the Office

2. The Ombudsman and representatives of the Office

Unique among OAA programs, this “representative” relationship has implications for:

- Designation/de-designation vs. hiring/firing
- Programmatic vs. personnel oversight
- Communications, training, and technical assistance

Some representatives of the Office indicate that they “serve 2 bosses”



Designation of Representatives: A Look at Policies/Procedures

1. Criteria for designation of individuals
2. Agency process for hiring LTCO staff
3. Refusal to designate, withdrawal or suspension of designation
4. Responsibilities of representatives

<p style="text-align: center;">Criteria</p> <ul style="list-style-type: none"> • Minimum qualifications – education, background, skills • Demonstrate capability • Free from conflict • Complete certification training requirements 	<p style="text-align: center;">Process for Hiring</p> <ul style="list-style-type: none"> • Ability of SLTCO to review the resumes of candidates being considered • Process for the SLTCO to raise concerns or interview the candidate prior to hire
<p style="text-align: center;">Refusal, Withdrawal, Suspension</p> <ul style="list-style-type: none"> • Reasons • Appeal rights • Continuation of ombudsman services 	<p style="text-align: center;">Responsibilities of Representatives</p> <ul style="list-style-type: none"> • LTCOP program requirements vs agency/organization job description <ul style="list-style-type: none"> • i.e. qualifications, training requirements, program responsibilities • Necessity of coordination

3. Conflicts of interest

Rule (45 CFR 1324.21(a)): First step: ***identify the COI***

Examples include placement in an organization that:

- Licenses, surveys, or certifies long-term care (LTC) facilities;
- Is an association of LTC facilities;
- Has ownership or investment interest in a LTC facility;
- Has governing board members with ownership, investment or employment interest in LTC facilities;
- Provides long-term care to residents of LTC facilities;
- Provides case management for residents of LTC facilities;
- Sets reimbursement rates for LTC facilities;
- Provides adult protective services;
- Is responsible for eligibility determinations for residents of LTC facilities;
- Conducts preadmission screening for LTC facility placements;
- Makes decisions regarding admission/discharge to or from LTC facilities; or
- Provides guardianship or other decision-making services for residents of LTC facilities.

Conflicts of interest (continued)

Rule (45 CFR 1324.21(b)): Second step: ***remove or remedy the COI***

- Both SUA and Ombudsman have duty to remove/remedy the COIs, including in local Ombudsman entities.
- ***Prohibited COI*** (i.e. cannot be remedied): Placement of the program in an organization that:
 - Is responsible for licensing, surveying, or certifying LTC facilities;
 - Is an association (or an affiliate of such an association) of LTC facilities; or
 - Has any ownership, operational, or investment interest in a LTC facility.

Why it matters:

- Important that residents, their representatives and others have access to a credible, resident-centered advocate without competing interests.
- Rule doesn't necessarily require relocation of the Office where a COI exists, but does require that steps must be taken to adequately remove or remedy the COI.
- Rule indicates that "remedy" may be sufficient in some circumstances, i.e. the rule permits some conflicting responsibilities to co-exist in an agency so long as firewalls and other policies adequately separate conflicting program operations.

Conflicts of interest (continued)

Rule (45 CFR 1324.21(b)(6) – (7)):

Ombudsman duties when using local Ombudsman entities:

- Avoid COI – prior to designating or renewing designation;
- Establish a process for periodic review/identification of COI;
- Require disclosure of COI and steps taken to remove/remedy
- Establish criteria and process for review/approval of steps taken to remedy/remove COI

Failure to disclose COI or inability to adequately remove/remedy a conflict = grounds for de-designation of the local Ombudsman entity by the Ombudsman.

1324.21 Conflicts of interest -- organizational (continued)

Rule: Third step (45 CFR 1324.21(b)(1)): : ***report steps taken to remove/remedy*** the COI

- Ombudsman must report steps taken to remove/remedy identified COI in NORS.
- Includes organizational COIs at local Ombudsman entity level (including AAAs)
- Accountability for remedying COI
 - Ultimately, ACL/AoA responsible for determining adequacy of removal/remedy.
- NORS reporting--Paperwork Reduction Act (PRA) notice planned in 2015.



Organizational COI: A Look at Policies/Procedures

1. Define conflict
2. Develop procedures

Define conflict

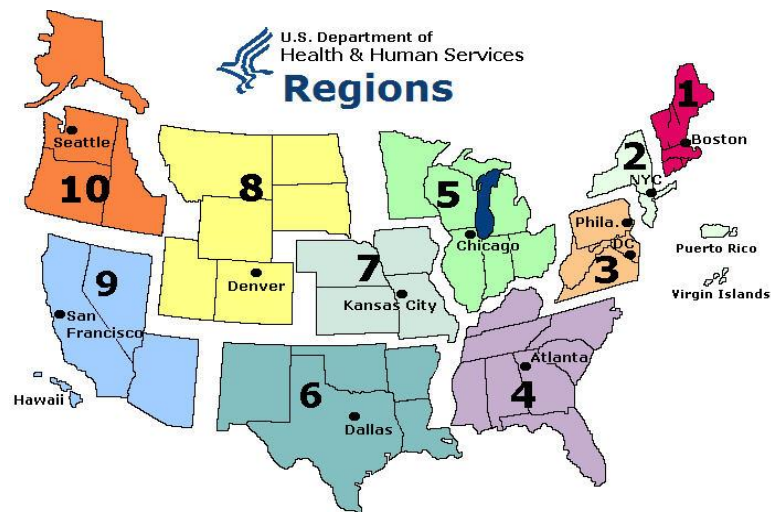
- What constitutes conflict?
- Include examples – i.e., “...operates programs with responsibilities conflicting with LTCOP responsibilities, for example, developing and carrying out care plans and serving as guardians over long-term care residents.”

Develop procedures that:

- Avoid
- Identify
- Disclose
- Remedy
 - Incorporate specificity into plan
 - Provide assurances to minimize negative impact
 - Identify how to know when conflict remedied
- Action if failure to identify or remedy

Now that the long-awaited Rule is published. . . what's next?

- **All** states will need to review – and some will need to revise -- their laws, regulations, policies and/or practices.
- ACL Regional Offices, National Ombudsman Resource Center, and Office of LTC Ombudsman Programs available to assist states.
- ACL is providing a delay in implementation until **July 1, 2016** in order to assist states with training and technical assistance.



Between now and July 2016 . . . ACL Activities

- Training for State Units, Long-Term Care Ombudsmen, etc – including TODAY!
- TA/Response to Questions made to Central Office, Regions, LTCOmbudsman.Rule@acl.hhs.gov
- FAQs developed and posted on www.acl.gov
- Work with Regions as they prepare for state reviews



What happens after July 2016?



Residents of our nation's long-term care facilities have access to strong, effective long-term care ombudsman programs.

Questions or comments?

Rule-related questions and requests for TA:

LTCOmbudsman.Rule@acl.hhs.gov

Archived webinars and additional training information:

www.ltcombudsman.org

How to find the Rule:

<https://www.federalregister.gov/articles/2015/02/11/2015-01914/state-long-term-care-ombudsman-programs>

