



The National **Long-Term Care**
Ombudsman Resource Center



VIRTUAL **OFFICE**
HOUR *Last Wednesday of the Month*

May 29, 2024

Misperceptions about your role or intent affects your credibility.

Your actions send a message about your role and your work, but that message may not be the one you want to communicate.

- ▶ Perceived vs. Actual or Potential
- ▶ Organizational Conflicts of Interest (COI)
 - ▶ Office of the State Long-Term Care Ombudsman
 - ▶ Local Ombudsman entities (LOEs)
- ▶ Individual COI
 - ▶ Ombudsman (State Ombudsman)
 - ▶ Representatives of the Office of the State Long-Term Care Ombudsman (representatives)



§1324.1 Definitions

- ▶ **Immediate family**, pertaining to conflicts of interest as used in section 712 of the Older Americans Act (the Act) (42 U.S.C. 3058g), means a member of the household or a relative with whom there is a close personal or significant financial relationship.
- ▶ **Representatives of the Office of the State Long-Term Care Ombudsman**, as used in sections 711 and 712 of the Act (42 U.S.C. 3058f and 3058g), means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in § 1324.19(a), whether personnel supervision is provided by the Ombudsman or his or her designees or by an agency hosting a local Ombudsman entity designated by the Ombudsman pursuant to section 712(a)(5) of the Act (42 U.S.C. 3058g(a)(5)).
- ▶ **State Long-Term Care Ombudsman, or Ombudsman**, as used in sections 711 and 712 of the Act (42 U.S.C. 3058f and 3058g), means the individual who heads the Office and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities and duties set forth in §§ 1324.13 and 1324.19.

Policies and Procedures

§1324.11(e)(4) *Conflicts of Interest*

- ▶ (i) Ensuring that no individual, or member of the immediate family of an individual, involved in the employment or appointment of the Ombudsman **has or may have** a conflict of interest;
- ▶ (ii) Requiring that other agencies in which the Office or local Ombudsman entities are organizationally located have policies in place to prohibit the employment or appointment of an Ombudsman or representative of the Office **who has or may have** a conflict that cannot be adequately removed or remedied;
- ▶ (iii) Requiring that the Ombudsman take reasonable steps to refuse, suspend or remove designation of an individual who has a conflict of interest, or who has a member of the immediate family who **has or may have** a conflict of interest, which cannot be adequately removed or remedied;
- ▶ (iv) Establishing the methods by which the Office and/or State agency will periodically review and identify conflicts of the Ombudsman and representatives of the Office; and
- ▶ (v) Establishing the actions the Office and/or State agency will require the Ombudsman or representatives of the Office to take in order to remedy or remove such conflicts.

Policies and Procedures

§1324.11(e)(6) Designation

- ▶ (6) Designation. Policies and procedures related to designation must establish the criteria and process by which the Ombudsman shall designate and/or refuse, suspend or remove designation of local Ombudsman entities and representatives of the Office.
 - ▶ (i) Such criteria should include, but not be limited to, the authority to refuse, suspend or remove designation a local Ombudsman entity or representative of the Office in situations in which an identified conflict of interest cannot be **adequately** removed or remedied as set forth in § 1324.21.

§ 1324.21(c) Identifying Individual COI

- ▶ (1) in identifying conflicts, the State agency and the Ombudsman shall consider individual conflicts that may impact the effectiveness and credibility of the work of the Office.
- ▶ (2) Individual conflicts of interest for an Ombudsman, representatives of the Office, and members of their immediate family include, but are not limited to:
 - ▶ (i) Direct involvement in the licensing or certification of a long-term care facility **or of a provider of a long-term care service;**
 - ▶ (ii) Ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility **or of a provider of a long-term care service;**
 - ▶ (iii) Employment of an individual by, or participation in the management of, a long-term care facility **or a related organization** in the service area or by the owner or operator of any long-term care facility in the service area;

§ 1324.21(c) Identifying Individual COI (cont.)

- ▶ (iv) Receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;
- ▶ (v) Accepting gifts or gratuities of significant value from a long-term care facility or its management, a resident or a resident representative of a long-term care facility in which the Ombudsman or representative of the Office provides services (except where there is a personal relationship with a resident or resident representative which is separate from the individual's role as Ombudsman or representative of the Office);
- ▶ (vi) Accepting money or any other consideration from anyone other than the Office, or an entity approved by the Ombudsman, for the performance of an act in the regular course of the duties of the Ombudsman or the representatives of the Office without Ombudsman approval;

§ 1324.21(c) Identifying Individual COI (cont.)

- ▶ (vii) Serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in which the Ombudsman or representative of the Office provides services; **and**
- ▶ (viii) Serving residents of a facility in which an immediate family member resides.;
- ▶ **(ix) Management responsibility for, or operating under the supervision of, an individual with management responsibility for, adult protective services; and**
- ▶ **(x) Serving as a guardian or in another fiduciary capacity for residents of long-term care facilities in an official capacity (as opposed to serving as a guardian or fiduciary for a family member, in a personal capacity).**

§ 1324.21(d) Removing or remedying individual conflicts

- ▶ (1) The State agency or Ombudsman shall develop and implement policies and procedures, pursuant to § 1324.11(e)(4), to ensure that no Ombudsman or representatives of the Office are required or permitted to hold positions or perform duties that would constitute a conflict of interest as set forth in § 1324.21(c). This rule does not prohibit a State agency or Ombudsman from having policies or procedures that exceed these requirements.

- ▶ (2) When considering the employment or appointment of an individual as the Ombudsman or as a representative of the Office, the State agency or other employing or appointing entity shall:
 - ▶ (i) Take reasonable steps to avoid employing or appointing an individual who has an unremedied conflict of interest or who has a member of the immediate family with an unremedied conflict of interest;
 - ▶ (ii) Take reasonable steps to avoid assigning an individual to perform duties which would constitute an unremedied conflict of interest;
 - ▶ (iii) Establish a process for periodic review and identification of conflicts of the Ombudsman and representatives of the Office, and
 - ▶ (iv) Take steps to remove or remedy conflicts.

§ 1324.21(d) Removing or remedying individual conflicts (cont.)

- ▶ (4) In no circumstance shall the State agency, other agency which carries out the Office, or an agency hosting a local Ombudsman entity appoint or employ an individual, nor shall the Ombudsman designate an individual, as a representative of the Office who:
 - ▶ (i) Has direct involvement in the licensing or certification of a long-term care facility;
 - ▶ (ii) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;
 - ▶ (iii) Receives, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility; or
 - ▶ (iv) Is employed by, or participating in the management of, a long-term care facility.
 - ▶ (A) An agency which appoints or employs representatives of the Office shall make efforts to avoid appointing or employing an individual as a representative of the Office who has been employed by or **participated** in the management of a long-term care facility within the previous twelve months.
 - ▶ (B) Where such individual is appointed or employed, the agency shall take steps to remedy the conflict.

Program Management Considerations

- ▶ What is the likely impact on consumers' perspectives on the effectiveness and credibility of the Ombudsman or the representative of the Office?
- ▶ What is the likely impact on long-term care service providers' perspectives on the effectiveness and credibility of the Ombudsman or the representative of the Office?
- ▶ What is the likely impact on the effectiveness and credibility of the Ombudsman program's systemic advocacy?

Other potential conflicts...

- ▶ Does a representative of the Office hold a professional license from an organization that has mandatory reporting requirements that do not comport with the disclosure provisions in the Older Americans Act (OAA)?
- ▶ Are representatives of the Office required or permitted to hold other positions or perform other duties not listed above, that would constitute a COI?
- ▶ Are there other conflicts included in the program policies that would impact the effectiveness and credibility of the work of the program?
- ▶ Are there program prohibitions related to length of time from being employed by, or participating in the management of, a long-term care facility?



Discussion

Share an example of a conflict of interest you have remedied.

Share an example of a conflict of interest you have removed.



Is this a conflict of interest?

“
Mrs. Rivera wants to volunteer in the only facility in her county. Her mother lived in that facility until she passed away six months ago. Mrs. Rivera says that she wants to continue helping other residents who live there.

Yes or No?

Avoid, Remedy, or Remove?

“
My step-mother resides in the facility in which I am assigned, but we haven't talked in years, so I don't think it is a conflict of interest.

Yes or No?

Avoid, Remedy, or Remove?

“
*I worked in the facility for only 2 months,
and it was 2 years ago. I left on good terms,
so I don't see it as a conflict of interest to be
assigned as a representative to this facility.*

Yes or No?

Avoid, Remedy, or Remove?



I own a licensed group home and would like to become a representative of the Office.

Yes or No?

Avoid, Remedy, or Remove?




I license and inspect assisted living facilities but would like to volunteer as a representative of the Office in my spare time.

Yes or No?

Avoid, Remedy, or Remove?

Key Resources

- ▶ [LTCOP Rule Brief: Considerations for Identifying and Addressing Individual Conflicts of Interest](#)
- ▶ [Individual Conflict of Interest Screening Template \(Word, Fillable PDF\)](#)
 - ▶ Employment and Responsibilities
 - ▶ Financial Interest
 - ▶ Relationships
 - ▶ Additional Considerations
 - ▶ Agreements



SCREENING TEMPLATE

LONG-TERM CARE OMBUDSMAN PROGRAM INDIVIDUAL CONFLICT OF INTEREST SCREENING TEMPLATE

This document contains information based on the LTCOP Rule, §1324.21(d), Conflicts of Interest. The content is adapted from similar tools developed by State Ombudsman programs, such as Ohio, Texas, Oklahoma, and Iowa. This template is intended for use as a guide when Ombudsman programs develop or revise individual conflict of interest screening tools. States are responsible for adding any state specific requirements, definitions, or processes that may not be included in this document. Additional information on individual conflicts of interest, the provisions in the Rule, and examples of screening tools used by Ombudsman programs can be accessed [here](#).

Name: _____ Date: _____
Address: _____ Phone: _____
Email Address: _____

Employment and Responsibilities

Have you or any members of your immediate family or household ever been employed by a long-term care provider (facility or by the owner or operator of a facility)? Immediate family means a member of the household or a relative with whom there is a close personal or significant financial relationship. (§712 of the Older Americans Act, §1324.1, Definitions, LTCOP Rule.) Yes No

Do you, or any members of your immediate family or household, receive or have the right to receive, directly or indirectly remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility? Yes No

Are you working for, or have you worked for, an association (or an affiliate of an association) of long-term care facilities or of any other residential facilities for older individuals or individuals with disabilities? Yes No

Are you providing care, or have you provided care, for residents of long-term care facilities or involved in the provision of personnel for long-term care facilities? Yes No

Are you currently participating in the licensing, certification, and/or surveying of long-term care facilities, or have you in the past? Yes No

▶ Key Takeaways

- ▶ Establish a comprehensive initial screening process
 - ▶ Process for disclosure
 - ▶ Process for at least annual reviews
- ▶ Avoid conflicts whenever possible
- ▶ Remove or remedy the conflict



The National **Long-Term Care**
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This project was supported, in part, by grant number 900MRC0002-01-00, from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions do not, therefore, necessarily represent official Administration for Community Living policy.