

**QUESTION: What does the LTCOP Rule say about individual conflict of interest for a State Ombudsman, representatives of the Office, and members of their immediate family?**

The LTCOP Rule provides more clarity regarding conflict of interest (COI) for the Ombudsman and for representatives of the Office ([LTCOP Rule p. 7766, third column](#)). The Rule lists COIs which cannot be remedied and others for which a remedy may be possible. The Ombudsman is to avoid COI in designating individuals as representatives and must designate representatives with a COI that cannot be removed or remedied.

The Rule lists the following examples of individual COI for a State Ombudsman, representatives of the Office, and members of their immediate family:

- (i) Direct involvement in the licensing or certification of a long-term care facility;
- (ii) Ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility;
- (iii) Employment of an individual by, or participation in the management of, 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;
- (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;
- (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.

The following are COIs which cannot be remedied if the individual:

- Has direct involvement in the licensing or certification of a long-term care facility;
- Has an ownership or investment interest in a long-term care facility;
- 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
- Is employed by, or participating in the management of, a long-term care facility.

There is an additional prohibited COI for the State Ombudsman. That individual cannot have been employed by or participating in the management of a long-term care facility within the previous twelve months.

States are taking a fresh look at individual COI for staff and volunteers. Some states are finding that individuals who have been serving as a representative of the Office have COIs as defined in the regulations. Avoiding COI in rural areas may be particularly challenging. Another challenge is explaining to a program representative that a COI exists and action is required. The litmus test for a remedy is the impact on the effectiveness and credibility of the work of the program [1324.21 (d)(2)].

The Institute of Medicine's report, *Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act*, Chapter 4, Conflicts of Interest, has a few statements that may be helpful in considering how to assess the presence or absence of conflict of interest. [Click here for Institute of Medicine Report.](#)

Individual Conflicts of Interest: The manner in which ombudsmen conduct themselves may be perceived by others as motivated from interest other than the well-being of the resident. Perception of conflict of interest may be a significant problem for the individual ombudsman, even though the ombudsman may believe that his or her actions are motivated primarily to serve the resident. pp. 114 - 115

In determining whether a COI exists and if one does, whether the conflict can be remedied, it may be helpful to think of various scenarios that may arise and how the actions of the representative of the Office could be perceived by the resident, staff, and others, as well as the potential impact on the credibility of the program. The impact on the program may extend to situations where opponents of the program or of a position the program has taken, such as a change in a regulation or a law, may find something to publicize as an example of the bias of the program. If a remedy is agreed upon, consider how frequently the Ombudsman will assess the situation to determine whether the remedy is effective.

It is critical that Ombudsman programs identify, avoid, and remedy conflicts since the appearance of a conflict can damage the public perception and credibility of the program as an independent voice for residents. Periodic review and identification of COI is required. Residents must be able to trust that the Ombudsman has their interest as his or her primary focus, without a sense of loyalty to a previous employer or coworkers. (LTCOP Rule Preamble comments, p.7755)

As programs review and revise policies to address COIs, NORC and ACL/AoA are available as resources. Please share newly developed or revised policies, screening tools, and other COI procedures with NORC.

## Resources

- [LTCOP Rule, Individual COI on page 7766, third column](#)
- The document, [Conflict of Interest and the LTCOP Resource Paper, July 2009](#), is still very applicable and contains examples of state policies and procedures on COI.
- [Long-Term Care Ombudsman Program Final Rule Webinar](#)
- This March 2015 webinar was presented by Becky Kurtz, Director, Office of LTCO Programs with AoA of ACL, with an introduction by Kathy Greenlee, Administrator, Administration for Community Living; Assistant Secretary, Administration on Aging. View the slides [here](#).