



The National Long-Term Care Ombudsman Resource Center

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WE WILL BEGIN IN A FEW MINUTES



The National Long-Term Care Ombudsman Resource Center

THE LTCOP RULE IDENTIFYING AND ADDRESSING INDIVIDUAL CONFLICTS OF INTEREST

April 25, 2017

Poll Questions

1. Are you located:

In the state Ombudsman office

In a local Ombudsman entity

Not an Ombudsman

2. I've been an Ombudsman program representative for:

More than 10 years

More than 5 years to 10 years

2 to 5 years

Less than 2 years

Not applicable

Objectives of today's webinar

- Understand the individual conflicts of interest provisions in the LTCOP Rule,
- Learn about Ombudsman program policies, processes and tools, to identify and address conflicts of interest (COI), and
- Gain new ideas by applying the provisions to sample situations.

Agenda and Presenters

- **Individual COI provisions in the LTCOP Rule**, *Louise Ryan*, Ombudsman Program Specialist, Office of the Long-Term Care Ombudsman Programs, ACL/AoA
- **Processes and Forms for COI Screening, Remediating and/or Removing, Office of the Ombudsman**, *Patty Ducayet*, Texas State Long-Term Care Ombudsman
- **Identifying, Removing, and/or Remediating COI at the Local Ombudsman Entity level**, *Stacey Premo*, Director, Ombudsman Program, Toledo, Ohio
- **Questions, Discussion**
- **Sample Situations for Discussion**
- **Resources and Wrap-Up**



Long-Term Care Ombudsman Rule: Individual Conflicts of Interest

Louise Ryan, MPA
Ombudsman Program Specialist
Office of Long-Term Care Ombudsman Programs
April 25, 2017





Agenda

- Review – relevant requirements of the LTCOP Rule
 - Definitions
 - Policies and Procedures
- Review – requirements related to Individual Conflicts of Interest (Col)
 - Identify – review the list of examples found in the rule
 - Including those conflicts which can impact the credibility and effectiveness of the program
 - Remedy or remove – review examples

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,
 - With regards to both organizational and individual conflicts of interest
 - Requires Ombudsman programs to:
 - avoid,
 - identify,
 - remedy or remove



Related provisions regarding Conflicts of Interest

1324.1 Definitions:

“Immediate family” – “Immediate family, pertaining to conflicts of interest as used in section 712 of the Act, means a member of the household or a relative with whom there is a close personal or significant financial relationship.”

“Representatives of the Office ” - *“Representatives of the Office of the State Long-Term Care Ombudsman*, as used in sections 711 and 712 of the Act, 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.”

1324.1 Definitions (continued)

“State Long-Term Care Ombudsman, or Ombudsman, as used in sections 711 and 712 of the Act, 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 §§1324.1 and 1324.19 of this rule.”

Why it matters:

- For consistency with the OAA, Rule uses the term “Ombudsman” to specifically refer to one individual: the State LTC Ombudsman.
- Rule does not use following terms: “local ombudsman” or “volunteer ombudsman” but rather the Rule uses the term “Representative of the Office”
- 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.

Policy & Procedure Requirements

§1324.11 (e) Program policies and procedures are to be established by the Ombudsman if he/she has appropriate legal authority and must include provisions related to:

(4) Conflicts of interest. Policies and procedures regarding conflicts of interest must establish mechanisms to identify and remove or remedy conflicts of interest as provided in §1324.21, including:

- (i) Ensuring that no individual, or member of the immediate family of an individual, involved in the employment or appointment of the Ombudsman is subject to 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 representatives of the Office with a conflict that cannot be adequately removed or remedied;

Policy & Procedure (continued)

- (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 with 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.

Policy & Procedure Requirements (continued)

- *The Rule also requires:*
 - *Designation.* Policies and procedures related to designation must establish the criteria and process by which the Ombudsman shall designate and 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 Conflicts of interest -Individual

- State agency and Ombudsman must consider COI: can impact effectiveness and credibility.
- Examples (for an Ombudsman, representatives of the Office, and members of their immediate family) include:
 - Direct involvement in the licensing or certification of a LTC facility;
 - Ownership, operational, or investment interest in an existing or proposed LTC facility;
 - Employment by or management of a LTC facility in the service area;
 - Receipt of, or right to receive remuneration from a LTC facility or its management;
 - Accepting gifts or gratuities of significant value from a LTC facility or its management, a resident or a resident representative of a LTC facility;
 - Accepting money or any other consideration from anyone other than an entity approved by the Ombudsman for performing program duties;
 - Serving as guardian or other surrogate decision-maker for a resident of a LTC facility in the service area; and
 - Serving residents of a facility in which an immediate family member resides.

1324.21 Conflicts of interest -- individual (continued)

Rule: Second step: ***remove or remedy the COI***

- ***Prohibited COI*** (i.e. cannot be remedied); individual:
 - Has direct involvement in licensing, surveying, or certifying LTC facilities;
 - Has any ownership, operational, or investment interest in a LTC facility;
 - Has been employed by or participating in the management of a LTC facility
 - For Ombudsman: within the previous twelve months
 - For representatives of the Office: current employment;
 - Receipt of, or right to receive remuneration from a LTC facility or its management.

Additional information:

- Some states will need to change Ombudsman hiring requirements to comply (others already prohibit prior employment in LTCO facility).
- Rule does not require this “cooling off” period for hiring/appointing representatives of the Office, but still a COI that requires development of an adequate remedy.

1324.21 Conflicts of interest -- individual (continued)

Rule: ***Policies and procedures - summary***

- When considering the employment/appointment of the Ombudsman or representative of the Office, the employing/appointing entity shall:
 - Avoid unremedied COIs,
 - Establish a process for periodic review, identification, and removal/remedy of COI.
- Ombudsman or SUA must ensure that no Ombudsman or representatives of the Office are required or permitted to hold positions or perform duties that would constitute a COI.

Additional information:

- Programs need to consider additional COIs that may impact the effectiveness and credibility of the work of the Ombudsman program
 - Screening is critical (both paper and interviews) when evaluating conflicts of interest, i.e. a prospective volunteer has a profession that may require additional attention and potential remedies.

Common examples of individual conflicts

- Employees of long-term care facilities are neighbors, friends and family of representatives of the Office – this is especially a challenge in rural areas.
- Wearing many “hats,” – i.e. individual works as Representative of the Office 15 hours a week, Adult Protective Services investigator 15 hours a week; and supports the guardianship program 10 hours a week.
- Previous employment in a long-term care facility and retirement plan is primarily comprised of company stock.
- Steps to remedy/remove may include:
 - Assignment of duties relating to specific facilities to other representatives of the Office without COI;
 - Removing conflicting duties;
 - Divestment of financial interests within reasonable time.

Questions or comments?

How to find the Rule: [https://www.ecfr.gov/cgi-](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=5b7abe6b970a70ccdbff264ab58dcad2&mc=true&n=sp45.4.1324.a&r=SUBPART&ty=HTML#se45.4.1324_11)

[bin/retrieveECFR?gp=&SID=5b7abe6b970a70ccdbff264ab58dcad2&mc=true&n=sp45.4.1324.a&r=SUBPART&ty=HTML#se45.4.1324_11](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=5b7abe6b970a70ccdbff264ab58dcad2&mc=true&n=sp45.4.1324.a&r=SUBPART&ty=HTML#se45.4.1324_11)

LTC Ombudsman Frequently Asked Questions (FAQ's)

https://aoa.acl.gov/AoA_Programs/OAA/resources/Faqs.aspx#Ombudsman

Louise Ryan

E-mail – louise.ryan@acl.hhs.gov

(206) 615-2514



Poll Question

- Has your program changed any practices or tools related to individual COI in response to the LTCOP Rule?
 - Yes
 - No

Screening Applicants and Remedying Conflicts



Patty Ducayet

State Long-term Care Ombudsman
Office of the State Long-term Care Ombudsman
Texas Department of Aging and Disability Services
MC - W 250, PO Box 149030
Austin, TX 78714
p: 512-438-4356
f: 512-438-3233

Texas Examples

When to Screen

- At application for a job or to volunteer
- The person believes they may have a conflict
 - job change, moonlighting
 - family job or circumstances change
- The program believes the person may have a conflict
- Every year for current staff and volunteers

Protecting Resident Rights



How to Screen

- Use form – answer yes or no to every question
 - Some questions are time-specific
- Yes answers require explanation
- Managing/lead ombudsman reviews answers and explanations, probes if something is unclear
- Consultation with state office is encouraged

Protecting Resident Rights



When and How to Train

Use the screening form:

- as you screen for hire or volunteering;
- first day of certification or orientation training; and
- every year, in person.

Make time for private discussions

Give examples

Protecting Resident Rights



When to Remedy:

- before making a job offer to an applicant;
- before a volunteer begins performing ombudsman functions;
- within 5 days of identifying a conflict with a managing/lead ombudsman, otherwise within 30 days;
- if the conflict can be sufficiently contained; and
- if the person with a conflict complies with policies.

Protecting Resident Rights



How to Remedy

- Name the person with a conflict and what the conflict is
- ID businesses or people associated with it
- Explain what ombudsman functions are affected by it
- Explain how you will address those functions and who will supervise the ombudsman to determine compliance

Protecting Resident Rights



How to Remedy (continued)

- Where the ombudsman is placed is key – in relation to where the conflict exists
- Staff remedy plans must consider multiple facility assignments
- Contain the conflict –
 - Example: minimize ombudsman access with former clients

Protecting Resident Rights



Identifying, Remediating and/or Removing COI at the Local Ombudsman Entity Level

Stacey Premo, Director, Ombudsman Program
Toledo, Ohio

<http://codes.ohio.gov/oac/173-14-15> <http://codes.ohio.gov/orc/173.15>

QUESTIONS?
COMMENTS?

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
- No

Is this a conflict of interest?

An Ombudsman program representative works half-time, the other 50% of his job is serving as a benefits counselor.

- Yes
- No

Is this a conflict of interest?

An Ombudsman program representative is paid to teach a continuing education class for social workers. Almost all of the students work in long-term care facilities in the area covered by the Ombudsman program representative.

- Yes
- No

RESOURCES

- **Older Americans Act**

- Section 712 State Long-Term Care Ombudsman Program
 - (a) Establishment
 - (5) Designation of Local Ombudsman Entities and Representatives
 - (C) Eligibility for Designation
 - (f) Conflict of Interest
 - (1) Individual Conflict of Interest

- **LTCOP Rule**

- Final Rule in Federal Register
<http://ltcombudsman.org/uploads/files/library/2015-01914.pdf>
- LTCOP Final Rule NORC webpage-
http://ltcombudsman.org/library/fed_laws/ltcop-final-rule

LTCOP Rule Issue Brief

Considerations for Identifying and Addressing Individual Conflicts of Interest

- Implementation, Key Points to Consider
- List of Authorities
- Coming Soon-
Additional Tools

Issue Brief available here:

[http://ltcombudsman.org/
uploads/files/support/ltcop-
rule-issue-brief-coi-
final.pdf](http://ltcombudsman.org/uploads/files/support/ltcop-rule-issue-brief-coi-final.pdf)

LTCOP Rule Issue Brief



CONSIDERATIONS FOR IDENTIFYING AND ADDRESSING INDIVIDUAL CONFLICTS OF INTEREST

The purpose of this document is to assist states to identify and remedy or remove conflicts of interest (COI) of individuals designated as the Ombudsman or as representatives of the Office as required by the State Long-Term Care Ombudsman Programs, Final Rule.¹

The Rule requires four steps regarding individual COIs:

1. Establish and implement policies and procedures related to COI,
2. Identify COIs,
3. Avoid appointing or designating individuals with COI, or
4. Remove or Remedy the conflict.

This brief consists of the following two sections pertinent to the topic: implementation, Key Points to Consider; and a List of Authorities.

Implementation, Key Points to Consider

The LTCOP Rule requires the establishment and implementation of policies and procedures related to conflicts of interest. The Rule² also requires that reasonable steps be taken to avoid individual conflicts of interest for the State Ombudsman and all representatives of the Office. Ombudsman program policies and procedures must establish a process to identify and remove or remedy conflicts of interest. This brief is based on the Rule and is intended to provide Ombudsman program management considerations related to identifying actual and potential individual conflicts of interest (refer to the [Rule](#) for the complete language in the requirements).³

The State Agency and the Ombudsman are responsible for identifying conflicts that "may impact the effectiveness and credibility of the work of the Office" [§1324.21(c)(1)].

Policies and Procedures

Develop and implement policies and procedures to ensure that no Ombudsman or representative of the Office is required or permitted to hold positions or perform duties that would constitute a conflict of interest.

- ☐ Does the program, including local Ombudsman entities, where applicable have established policies and procedures to implement the conflict of interest provisions of the LTCOP Rule?
- ☐ Do the policies and procedures establish mechanisms, such as screening questions on applications, interview questions, disclosure of conflicts form to assist with identification of conflicts?
- ☐ Do the policies and procedures outline mechanisms to remove or remedy the conflicts of interest? Do these mechanisms include:

Additional Resources- COI

http://ltcombudsman.org/library/fed_laws/ltcop-final-rule#norc-resources

- **Conflict of Interest and the Long-Term Care Ombudsman Program**

This resource paper discusses the Older Americans Act provisions and dimensions of conflict of interest. Key resources and approaches utilized by several state and local ombudsman programs are included as examples of program management practices to address issues such as policies and procedures, remedies, decision-making criteria, and COI forms.

- **Long-Term Care Ombudsman Strategy Session**

In this document conflicts of interest are discussed in the session summary, as well as in two briefs about COI in the appendices.

- Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs of the Older Americans Act (Institute of Medicine (IoM), 1995)

- **Chapter 7: Conflicts of Interest**

- **A Self-Evaluation and Continuous Quality Improvement Tool for State and Local Ombudsman Programs** (COI discussed on page 47 of the state LTCOP version and page 62 of the local LTCOP version)

This tool provides State and Local Long-Term Care Ombudsmen with an instrument for conducting a self-assessment of their program to identify the program's strengths and areas in need of improvement. Information and recommendations from several State and Local LTCO, NORC staff and consultants, AoA staff and resources such as the 1995 Institute of Medicine report were used to determine 13 components deemed fundamental to having a strong, effective ombudsman program.

SLTCO Policies & Procedures, COI



December 2015

SLTCOP Policies & Procedures – Conflict of Interest (COI)

*Do not have policies on file for states in **red text**. This chart only includes SLTCOP policies and procedures as of December 2015, not state laws, regulations, or other documents and it may be updated as we receive more policies and procedures. For more information, contact ombudcenter@theconsumervoice.org.

State	COI Policy	Defined	Organizational	Individual	Remove /Remedy	Acknowledgement Form	Additional Details	SLTCOP Structure	Local Program
AK	X	X	X	X	X		Includes Failure to Identify or Remedy	Part of other Govt. Agency	Direct
AL	X	X	X	X	X			SUA	Contract w/AAA
AR	X	X	X	X	X			SUA	Contract w/AAA
AZ	X	X		X		X		SUA	Contract w/AAA
CA	X			X		X	Part of LTCO Professional Standards	SUA	Contract w/AAA
CO	X		X	X			Includes Examples	Independent non-profit	Contract w/AAA

<http://ltcombudsman.org/uploads/files/library/SLTCOP-chart-ConflictofInterestDec232015.pdf>

Updated Policies and Procedures will be added as NORC receives them.



LTCOP Volunteer Management: Model Materials and Sharing of Best Practices
webinar on May 31, 2017 3:00 PM EDT (90 minutes)

[Register today \(https://attendee.gotowebinar.com/register/4991838147511192833\)](https://attendee.gotowebinar.com/register/4991838147511192833)

This webinar is applicable to all staff representatives who certify, recruit, train and work with volunteer Ombudsmen. We'll discuss the new model volunteer intake and risk management materials (e.g., application form, interview questions, code of ethics, acknowledgement form) and hear about recruitment ideas.



The National Long-Term Care Ombudsman Resource Center

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www.ltcombudsman.org

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