



State Long-Term Care Ombudsman Programs: Final Rule (2015) Overview 45 CFR 1321 and 1327



Administration for Community Living

Mission:

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

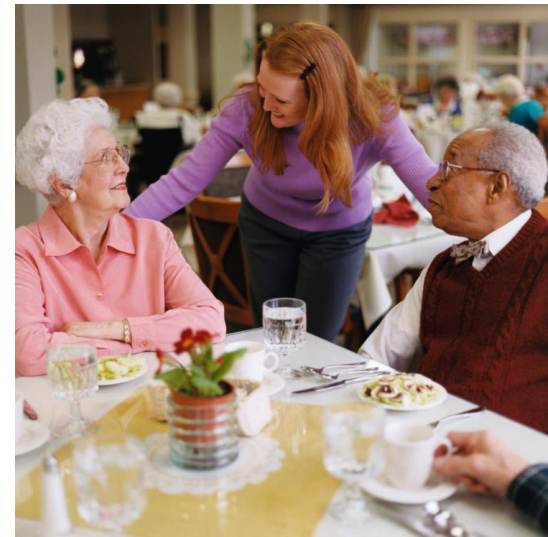


Program Description

The Older Americans Act (OAA) establishes the Long-Term Care (LTC) Ombudsman program as a person-centered consumer protection service.

It resolves problems and advocates for the rights of individuals in order 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.
- **2000**--Assisted living expressly added to the definition of "long-term care facility" in OAA.

Since inception:

- Envisioned as an autonomous entity able to represent consumer interests.
- Challenges to full implementation due to bureaucratic structures and/or political environment of many states.
- No regulations to fully implement the program and provide consistent level of consumer protection across states.

Federal Law and Regulation: A Refresher

Federal laws generally apply to people living in the United States and its territories. Congress creates and passes bills. The President then signs those bills into law.

- New laws are assigned a **public law (PL)** number. For example:
[The Older Americans Act as amended In 2006 known as Public Law 109-365](#)
- The **United States Code** contains the general and permanent laws of the United States. For example:
42 U.S.C. Chapter 35 - PROGRAMS FOR OLDER AMERICANS
(Older American Act)

Federal Law and Regulation: A Refresher (continued)

Federal Regulations (sometimes a group of regulations is collectively called a “federal rule”) are issued by federal agencies, boards, or commissions.

- They explain how the agency intends to carry out a law.
- By law, federal agencies must consult the public when creating, modifying, or deleting rules in the **Code of Federal Regulations (CFR)**.

Federal Law and Regulation: A Refresher (continued)

Administration for Community Living/Administration on Aging (the federal agency) has promulgated the following regulations to carry out the OAA:

- [Older Americans Act Regulations \(2015\) 45 CFR Part 1327 – State Long-Term Care Ombudsman Programs](#)
- [Older Americans Act Regulations \(1988, and one 2015 revision\), 45 CFR Part 1321 \(Title III\)](#)
Grants for State and Community Programs on Aging
- [Older Americans Act Regulations \(1988\), 45 CFR Part 1326 \(Title VI\)](#)
Grants to Indian Tribes for Support and Nutrition Services
- [Older Americans Act Regulations \(1988\), 45 CFR Part 1328 \(Title VI\)](#)
Grants for Supportive and Nutritional Services to Older Hawaiian Natives

Putting it all together:

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 1327
OAA Titles VII

Guidance;
examples =

Program
Instructions

Letters to
states

Need for rulemaking

- Some OAA provisions need additional clarity
- Some OAA provisions have raised questions about implementation
- ACL compliance review of and technical assistance (TA) engagements with states have highlighted difficulty of ACL's ability to determine 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

Need for rulemaking (continued)

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”

Response from a State Ombudsman to ACL:

“[M]y current boss . . . ‘gets it’ so I’m free to speak to whoever I want to and testify on various bills. BUT he’s an appointee and when I get a new Governor I also get a new boss . . . and then we have to establish the ground rules all over again. It shouldn’t be so arbitrary. We’re so lucky [Assistant Secretary Greenlee and other ACL staff] have all ‘been there’ BUT that too can change and so what can AOA and Congress do to ‘solidify’ the original intent of being an independent advocate for our most vulnerable seniors??”

Negligible Burden

- 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) to include a question regarding steps taken to address organizational conflicts of interest; plan to include within comprehensive NORS PRA request 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.



Other Considerations

- Administration on Aging (AoA, now part of the Administration for Community Living (ACL)) worked with stakeholders (2011-2012) to develop consensus around areas of needed guidance which were proposed in NPRM.
- Rule provides clarification and interpretation where OAA requirements have been unclear or difficult to implement.
- 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.

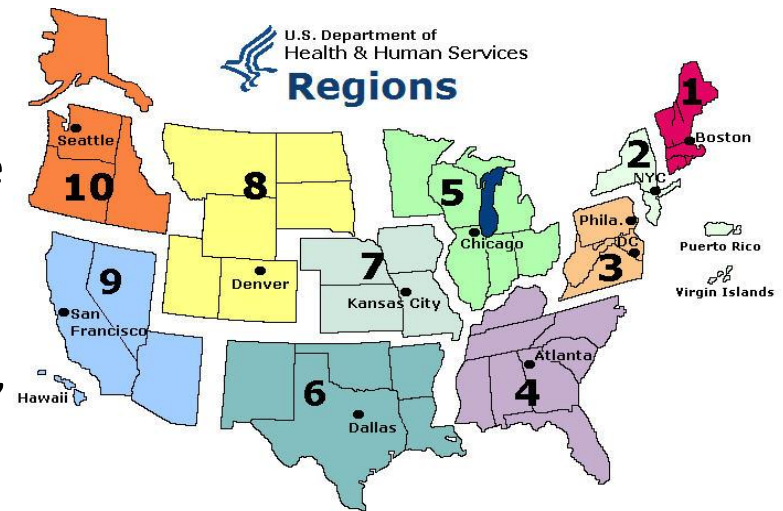


Comments on NPRM (2013)

- 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

Implementation by States

- Administered by ACL through OAA grants to State Units on Aging (SUAs)
 - Even if SUA doesn't provide LTC Ombudsman services directly
- LTCOP Rule is part of OAA grant compliance requirements of states.
- **All** states will need to review – and some will need to revise -- their laws, regulations, policies and/or practices.
- ACL Regional Offices 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 impacted states with training and technical assistance.



Final Rule Table of Contents

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

New Rule

1327.1 Definitions.

1327.11 Establishment of the Office of the State Long-Term Care Ombudsman.

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1327.15 State agency responsibilities related to the Ombudsman program.

1327.17 Responsibilities of agencies hosting local Ombudsman entities.

1327.19 Duties of the representatives of the Office.

1327.21 Conflicts of interest.

1321.11(b) State agency policies

Topic: Review of LTC Ombudsman program records by State Unit on Aging (SUA)

Previous rule:

- SUA director and one designated, senior manager may monitor Ombudsman program files.
- Files must omit the identity of any complainant or resident of a long-term care facility.

Revised rule:

- State LTC Ombudsman is responsible for monitoring the files, records and other information maintained by the Ombudsman program.
- Monitoring may be conducted by a designee of the Ombudsman.
- Neither the Ombudsman nor a designee shall disclose identifying information of any complainant or long-term care facility resident to individuals outside of the Ombudsman program, except as otherwise specifically provided in § 1327.11(e)(3).

Additional information:

- Clarifies that Ombudsman has discretion to determine release of Ombudsman program information (except as otherwise prohibited)

1327.1 Definitions

Topic: “Immediate family”

Rule:

“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.”

- Adapted from Federal standards of ethical conduct related to impartiality in an employee’s conduct. See 5 CFR 2635.502(a),(b).

Additional information:

- Limited to “conflict of interest” context (not regarding services to residents and their families)

1327.1 Definitions (continued)

Topic: “Office”

Rule:

“Office of the State Long-Term Care Ombudsman, as used in sections 711 and 712 of the Act, means the organizational unit in a State or territory which is headed by a State Long-Term Care Ombudsman.”

Additional information:

- Clarifies that the “Office” is the unit headed by the Ombudsman (as opposed to the SUA or other host agency).
- Significance: the OAA indicates a number of determinations are to be made by the “Office.”
- In a State with a decentralized structure, “Office” refers to the State-level unit (i.e. State Ombudsman and his/her direct reports), as opposed to “Ombudsman program,” which includes the State Office as well as local Ombudsman entities.

1327.1 Definitions (continued)

Topic: “*Representatives of the Office*”

Rule:

“*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 §1327.19(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.”

Additional information:

- Clarifies the relationship between the Ombudsman and the staff and volunteers who are designated by the Ombudsman to carry out the duties of the Office.
- Uses the OAA term “representatives of the Office” to describe designated staff and/or volunteers who perform LTC Ombudsman program duties, as opposed to common use of the term “ombudsman” to describe these individuals.

1327.1 Definitions (continued)

Topic: “*Resident representative*”

Rule:

“*Resident representative*, means any of the following:

- an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;
- a person authorized by State or Federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;
- legal representative, as used in section 712 of the Act; or
- the court-appointed guardian or conservator of a resident. . . . “

Additional information:

- Uses a resident-centered term
- Provides consistency lacking in the OAA

1327.1 Definitions (continued)

Topic: “*Ombudsman*”

Rule:

“*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 §§1327.13 and 1327.19 of this rule.”

Additional information:

- 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.”
- 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.

1327.1 Definitions (continued)

Topic: “*Ombudsman program*”

Rule:

“*State Long-Term Care Ombudsman program, Ombudsman program, or program*, as used in sections 711 and 712 of the Act, means the program through which the functions and duties of the Office are carried out, consisting of the Ombudsman, the Office headed by the Ombudsman, and the representatives of the Office.”

Additional information:

- Clarifies the use of the term “Ombudsman program” to incorporate all levels of the program, including representatives of the Office and, where applicable, local Ombudsman entities.

1327.1 Definitions (continued)

Topic: “*Willful interference*”

Rule:

“*Willful interference* means actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any of the functions or responsibilities set forth in §1327.13, or the Ombudsman or a representative of the Office from performing any of the duties set forth in §1327.19.”

Additional information:

- Responds to comments indicating a need for a definition in order to clarify and support the requirement in the OAA that the Office and its representatives are free from interference in the course of performing required functions.
- The Rule also contains new provisions regarding interference, retaliation, and reprisals at §1327.15(i).

1327.11 Establishment of the Office of the State Long-Term Care Ombudsman

Rule:

- Office is a “***distinct entity, separately identifiable***”
- SUA must require that the Ombudsman serve on a ***full-time basis***
- Requires ***minimum qualifications*** in hiring the Ombudsman; demonstrated expertise in:
 - Long-term services and supports or other direct services for older persons or individuals with disabilities;
 - Consumer-oriented public policy advocacy;
 - Leadership and program management skills; and
 - Negotiation and problem resolution skills.

Additional information:

- “***Full-time basis***” is clarified; an issue in some states in which the Ombudsman is given responsibility for multiple programs.

1327.11 Establishment of the Office of the State Long-Term Care Ombudsman (continued)

Topic: Ombudsman Program Policies and Procedures

Rule:

- Program policies and procedures are to be established by the Ombudsman if he/she has appropriate legal authority.
 - Otherwise, Ombudsman recommends policies and procedures to the SUA or other agency in which Office is located and the agency is required to establish appropriate policies and procedures.
- Requires input of agencies in which local Ombudsman entities are housed (including area agencies on aging, AAAs) and representatives of the Office into development of policies and procedures.

Additional information:

- Clarifies responsibilities of various parties in development and implementation of Ombudsman program policies and procedures.
- Provides flexibility for states' various organizational structures.

1327.11 Establishment of the Office of the State Long-Term Care Ombudsman (continued)

Topic: Ombudsman Program Policies and Procedures (continued)

Rule:

- Policies and procedures must include provisions related to:
 - 1) Program administration**--includes monitoring of local Ombudsman entities by Ombudsman; standards of promptness for complaint responses
 - 2) Procedures for access**--to facilities, residents and appropriate records
 - 3) Disclosure**--of Ombudsman program information

Additional information:

- Policies must require that disclosure of resident-identifying information without resident permission is prohibited (an OAA requirement).
- Disclosure limitation applies regardless of state mandated abuse reporting laws.

1327.11 Establishment of the Office of the State Long-Term Care Ombudsman (continued)

Topic: Ombudsman Program Policies and Procedures (continued)

Rule:

- Policies and procedures must include provisions related to:
 - 4) *Conflict of interest***
 - 5) *Systems advocacy***--the Office is required (and has sufficient authority) to carry out its statutory responsibilities, as the Office determines is appropriate, and regardless of State lobbying laws.

Additional information:

- Systems advocacy requirement has been a challenge in some states, especially when the Ombudsman is a state employee.
- Consultation with the SUA is encouraged--but cannot be used to control positions or communications of the Office.

1327.11 Establishment of the Office of the State Long-Term Care Ombudsman (continued)

Topic: Ombudsman Program Policies and Procedures (continued)

Rule:

- Policies and procedures must include provisions related to:
 - 6) Designation**—of representatives of the Office and local Ombudsman entities
 - 7) Grievance process**—re: determinations or actions of the Ombudsman and representatives of the Office
 - 8) Determinations of the Office**—re: program information disclosure, systems advocacy, communications

Comments:

- Designation and determination requirements are included in the OAA, but some states have found compliance a challenge.
- Grievance process is a new requirement, but some states already have in place.

1327.13 Functions and responsibilities of the State Long-Term Care Ombudsman

Rule:

- **Functions**—reiterates from OAA
- Describes Ombudsman as ***head of unified statewide program***
- **Designation**, and refusal, suspension, or removal of designation, of local Ombudsman entities and representatives of the Office; includes requirements for:
 - Monitoring of local Ombudsman entities;
 - Establishing certification training requirements;
 - Investigation of allegations of misconduct by representatives of the Office.

Additional information:

- Clarifies that Ombudsman fulfillment of systems advocacy function of OAA does not violate federal lobbying restrictions.
- Clarifies Ombudsman relationship to local Ombudsman entities and representatives of the Office.

1327.13 Functions and responsibilities of the State Long-Term Care Ombudsman (continued)

Rule:

- ***Ombudsman program information***—Information is the property of the Office; release is determined by the Ombudsman (local Ombudsman entities may maintain information)
- ***Disclosure***—Process of Ombudsman determination of release of information must be in accordance with established policies
- ***Fiscal management***--Ombudsman determines the use of the fiscal resources appropriated or otherwise available for the operation of the Office
- ***Annual report***
- ***Coordination with other entities***

Additional information:

- Reduces risks of release of program information that may be arbitrary or may violate the OAA.
- Clarifies Ombudsman role regarding fiscal management.
- NOTE: Meeting the National Ombudsman Reporting System (NORS) requirements can fulfill the annual report requirement, but there are also dissemination requirements (in addition to reporting to ACL/AoA).

1327.15 State agency responsibilities related to the Ombudsman program

Rule:

SUA shall ensure that:

- The Ombudsman comply with the OAA and this Rule.
- Program has **sufficient authority and access** to facilities, residents, and information needed to perform the functions, responsibilities, and duties of the Office.

SUA shall provide:

- **Training opportunities**; can utilize Title IIIB and Title VII funding for this purpose.
- **Personnel supervision and management** for the Ombudsman and representatives of the Office who are employees of the State agency, including assessment of Office fulfillment of functions.
- **Contract monitoring**, including fiscal monitoring, where applicable; and may request reports of program aggregated data for this purpose.

1327.15 State agency responsibilities related to the Ombudsman program (continued)

Rule:

SUA shall:

- Integrate the goals and objectives of the Office into the ***state plan on aging***
- Provide ***elder rights leadership***
 - Including through coordination of the goals and objectives of the Office with:
 - other programs established under Title VII and
 - other state elder rights, disability rights, and elder justice programs
- Prohibit and investigate allegations of ***interference, retaliation and reprisals***
 - Provide for sanctions
- Provide for adequate ***legal counsel*** for the program that:
 - Has competencies relevant to the legal needs of the program and of residents, and
 - Is without conflict of interest.

Additional information:

- Elder rights leadership impacts broader coordination than Ombudsman program.
- Provision of legal counsel has been challenge in some states, called for by many commenters.

1327.15 State agency responsibilities related to the Ombudsman program (continued)

Rule:

SUA shall require the Office to:

- Develop and approve an ***annual report***
- Fulfill ***systems advocacy*** responsibilities
- Provide ***communications*** regarding problems and concerns of individuals residing in long-term care facilities and Ombudsman program recommendations for improvements
- Establish procedures for ***training*** of representatives of the Office
- ***Coordinate with other relevant entities***

1327.17 Responsibilities of agencies hosting local Ombudsman entities

Rule:

- Agencies hosting local Ombudsman entities are responsible for the ***personnel management***, but not the programmatic oversight, of representatives of the Office
 - including employees and volunteer representatives of the Office

Additional information:

- Clarifies role of agency (e.g., AAAs) housing local Ombudsman entity, in response to situations in which representatives of the Office have multiple (and sometimes conflicting) requirements from the Ombudsman and from their employing agency.

1327.19 Duties of the representatives of the Office

Rule:

- **Duties**—reiterates from OAA
- **Complaint processing**
 - Purpose: investigate for the purposes of resolving the complaint to the resident's satisfaction and of protecting the health, welfare, and rights of the resident.
 - Types:
 - made by or on behalf of residents
 - that relate to action, inaction, or decisions,
 - that may adversely affect the health, safety, welfare, or rights of the residents;
 - including but not limited to a complaint related to abuse, neglect, or exploitation.

Additional information:

- Clarifies role of Ombudsman program with respect to abuse complaints
 - As advocate for abuse survivor, not as substantiator to prove that abuse occurred
 - Need for consistency:
 - Most states currently follow the approach of the Rule
 - In a few states, Ombudsman program currently serves as substantiator
 - In a few others, Ombudsman program currently does not work to resolve abuse complaints, but refers them all to APS and/or licensing.

1327.19 Duties of the representatives (continued)

Rule:

Person-centered complaint processing approach--the Ombudsman or representative of the Office shall:

- Support and maximize resident participation;
- Offer privacy;
- Discuss the complaint with the resident (and/or resident's representative) in order to:
 - Determine the perspective of the resident;
 - Request informed consent in order to investigate the complaint;
 - Determine the wishes of the resident with respect to resolution of the complaint, including:
 - whether the allegations are to be reported
 - disclosure of information to the facility and/or appropriate agencies.
- Advise the resident of his/her rights;
- Work with the resident to develop a plan of action for resolution of the complaint;
- Investigate to determine whether the complaint can be verified; and
- Determine whether the complaint is resolved to the resident's satisfaction.

1327.19 Duties of the representatives (continued)

Topic: Complaint processing (continued)

Rule:

- ***“Unbefriended” residents*** -- Clarifies authority to work to resolve complaint (and disclose relevant information) where the resident is unable to communicate informed consent, and has no resident representative.
 - Provides process for referrals and disclosure of information.
- Requires program to assist resident in contacting and/or disclosing information when resident goal is for ***regulatory, protective services or law enforcement action***.
- Prohibits program from ***reporting suspected abuse***, neglect or exploitation of a resident without informed consent.
 - Clarifies duty of program to report when abuse is personally witnessed.

Additional information:

- Addresses inconsistency among States regarding:
 - Authority to resolve complaints and disclose information for residents unable to consent and with no representative;
 - Abuse reporting, including when witnessed by a program representative.
- Provides guidance since OAA silent on how program serves “unbefriended” residents.

1327.21 Conflicts of interest

Topic: Examples of conflicts of interest (COI) -- organizational

Rule: First step: ***identify the COI***

Examples include placement of the Office, or requiring conflicting activities, 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.

1327.21 Conflicts of interest -- organizational (continued)

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

- Both SUA and Ombudsman have duty to identify and remove/remedy the COI.
- ***Prohibited COI*** (i.e. cannot be remedied): Placement of the Office 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.

Additional information:

- Many states (especially when Office is located in SUA) currently have COI.
- Rule doesn't necessarily require relocation of the Office, 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.

1327.21 Conflicts of interest -- organizational (continued)

Rule: Third step: ***report steps taken to remove/remedy*** the COI

- Ombudsman must report steps taken to remove/remedy identified COI in NORS.

Additional information:

- NORS reporting--Paperwork Reduction Act (PRA) notice planned in 2015.
- Ultimately, ACL/AoA responsible for determining adequacy of removal/remedy.

1327.21 Conflicts of interest -- organizational (continued)

Rule: ***Policies and procedures***

- COI policies and procedures required in 1327.11
- Where State agency contracts out the Office, State agency must have processes in place to avoid current--and to identify and address future--organizational COIs.
- Where local Ombudsman entities are designated, Ombudsman must have process in place to avoid current--and to identify and address future--organizational COIs.

Additional information:

- ACL anticipates requests for additional TA and sub-regulatory guidance regarding organizational COI.

1327.21 Conflicts of interest (continued)

Topic: Conflicts of interest – individual

Rule: First step: ***identify the COI***

- 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.

1327.21 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 already prohibit twelve-month (or longer) prior employment in LTC facility by the Ombudsman.
- Some states will need to change Ombudsman hiring requirements to comply.
- Rule does not require this “cooling off” period for hiring/appointing representatives of the Office but still considered a COI that requires development of an adequate remedy.

1327.21 Conflicts of interest -- individual (continued)

Rule: ***Policies and procedures***

- When considering the employment or appointment of the Ombudsman or representative of the Office, the state agency or other 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:

- Steps to remedy/remove may include:
 - Assignment of duties relating to specific facilities to other representatives of the Office without COI;
 - Divestment of financial interests within reasonable time.

Questions or comments?

ACL has created a dedicated e-mail
for Rule-related questions and requests for TA:
LTCOmbudsman.Rule@acl.hhs.gov

