

**CHAPTER 900: CONFLICT OF INTEREST**

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The organizations involved in the establishment of the Program and the individuals who carry out the duties of the Program, the Department, AAAs, and Provider Agencies must be free from conflicts of interest, pursuant to Section 712(f) of the Older Americans Act and procedures developed by the Office.

**902: Identifying a Conflict of Interest**

- A. These procedures are designed to permit the Department, the Office, AAAs, Provider Agencies and Regional Ombudsmen to identify and remedy any actual or potential conflict of interest.
  
- B. Conflicts which may arise from an organizational location include, but are not limited to, Program placement in an organization that:
  - 1. is responsible for licensing, surveying, or certifying long-term care facilities, long-term care services, HCBS waiver services or managed care organizations;
  - 2. is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities;
  - 3. has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility, a provider of long-term care services, a HCBS waiver service or a managed care organization;
  - 4. provides long-term care services, including programs carried out under a Medicaid waiver approved under section 1115 of the Social Security Act [42 U.S.C. 1315] or under subsection (b) or (c) of section 1915 of the Social Security Act [42 U.S.C. 1396n], or under a Medicaid State plan amendment under subsection (i), (j), or (k) of section 1915 of the Social Security Act [42 U.S.C. 1396n];
  - 5. receives or has 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, a HCBS waiver provider, or a managed care organization;
  - 6. has governing board members with any ownership, investment or employment interest in long-term care facilities, HCBS waiver providers or managed care organizations;
  - 7. provides long-term care to residents, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for residents;
  - 8. provides long-term care coordination or case management for residents or participants;
  - 9. sets reimbursement rates for long-term care facilities or long-term care services;

10. provides adult protective services;
  11. is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;
  12. conducts preadmission screening for long-term care facility placements;
  13. makes decisions regarding admission or discharge of individuals to or from long-term care facilities;
  14. provides guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long-term care facilities;
  15. provides legal services; or
  16. is an Area Agency on Aging.
- C. Potential conflicts for an individual Ombudsman or an individual involved in the employment or appointment of the State Ombudsman include, but are not limited to, participation in or an immediate family member's participation in any of the following:
1. the licensing or certification of a long-term care facility, a HCBS waiver service or a managed care organization;
  2. ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility, HCBS waiver provider, or managed care organization;
  3. current or former employment of an individual by, or current or former involvement in the management of a long-term care facility or by the owner or operator of any long-term care facility, a HCBS waiver provider or a managed care organization;
  4. the 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, a HCBS waiver provider, or a managed care organization;

5. accepting gifts or gratuities of significant value from a long-term care facility, a HCBS waiver provider, a managed care organization or its management, a resident, a participant or a representative in which an Ombudsman provides services (except where there is a personal relationship with a resident, participant, or representative which is separate from the individual's role as an Ombudsman);
6. accepting money or any other consideration from anyone other than the Office, or an entity approved by the State Ombudsman, for the performance of an act in the regular course of the duties of the Ombudsman without the State Ombudsman's approval;
7. serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident or a participant;
8. serving residents of a facility in which an immediate family member resides or serving participants of a HCBS waiver or a managed care organization in which a family member participates; and
9. providing services with conflicting responsibilities while serving as an Ombudsman to a resident or participant such as:
  - a) adult protective services;
  - b) discharge planning;
  - c) preadmission screening for long-term care or HCBS waiver services;
  - d) case management for long-term care or HCBS waiver services; or
  - e) legal services outside the scope of Ombudsman duties.

**903: Disclosure of a Conflict of Interest**

A. Procedure for the State Ombudsman

1. Identification of the conflict

The Department shall require the State Ombudsman or State Ombudsman candidate to identify individual conflicts of interest prior to employment and on an annual basis using the form developed by the Office.

2. Disclosure of the conflict

a) Persons seeking employment as the State Ombudsman shall disclose all potential conflicts of interest to the Department.

b) The State Ombudsman shall immediately inform the Director of any new potential conflicts of interest. Failure to report the conflict is grounds for termination.

B. Procedures for persons seeking or holding certification as Ombudsmen

1. Identification of the conflict

The Regional Program shall screen all persons seeking certification as Ombudsmen and support staff to identify individual conflicts of interest on forms prescribed by the Office.

2. Disclosure of the conflict

a) Persons seeking employment or certification as Ombudsman staff or volunteers shall disclose all potential conflicts of interest to the Regional Program prior to certification. Failure to report the conflict is grounds for non-certification.

b) After certification, Ombudsmen and support staff shall immediately inform the Regional Ombudsman of any new potential conflicts of interest. The Regional Ombudsman shall report the potential conflict of interest to the Office as soon as possible but no longer than five (5) business days of learning of the conflict. Failure to report the conflict is grounds for decertification.

C. Procedures for entities seeking or holding designation

1. Identification of a conflict

Agencies seeking or holding designation as Regional Programs shall disclose organizational conflicts prior to designation and at least on a yearly basis thereafter on forms prescribed by the Office. Each individual involved in and those who have authority within the Regional Program shall be screened to identify individual conflicts of interest.

2. Disclosure of the conflict

Such persons shall disclose to the Provider Agency all potential conflicts of interest. The Provider Agency shall report the potential conflict of interest to the Office as soon as possible but no longer than five (5) business days of learning of the conflict.

D. Procedures for the Area Agencies on Aging

1. Identification of a conflict

On an annual basis, AAAs shall screen all board members and staff who are involved with the oversight of the Regional Program to identify individual conflicts of interest on forms prescribed by the Office.

2. Disclosure of the conflict

Such persons shall disclose to the AAA all potential conflicts of interest. The AAA shall report the potential conflict of interest to the Office as soon as possible but no longer than five (5) business days of learning of the conflict.

E. Procedures for an individual involved in the employment or appointment of the State Ombudsman.

1. Identification of a conflict

The Department shall require anyone involved in the employment or appointment of the State Ombudsman, namely the Director of the Department on Aging, to identify individual conflicts of interest upon initial appointment by the Governor and on an annual basis using the form developed by the Office.

2. Disclosure of a conflict

The Director or other responsible individual(s) shall disclose to the State Ombudsman all potential conflicts of interest as soon as possible, but no longer than five (5) business days upon learning of the potential conflict. Should the individual(s) fail to report a potential conflict or refuse to remove or remedy a conflict, the State Ombudsman shall notify the Administration for Community Living (ACL) within five (5) business days.

3. In the event it is determined the Director or other responsible individual(s) has a conflict that cannot be remedied or removed, the Chief-of-Staff for the Department will be responsible for appointing the State Ombudsman, provided the Chief-of-Staff does not have an unremedied conflict.

4. In the event the individuals mentioned in 903 E (1) and (3) have a conflict that cannot be remedied or removed, the Deputy Director for the Department will be responsible for appointing the State Ombudsman.

F. Notification to the Office

Staff of the Department, AAAs, and Provider Agencies and all Ombudsmen have a duty to notify the Office of any conflict of interest of which they have knowledge. Where a conflict of interest within the Program has been identified, the Office shall be notified as soon as possible but no longer than five (5) business days of the discovery of the potential conflict.

G. Failure to disclose

Once identified, failure to disclose a potential conflict in a timely manner may be grounds for decertification as an Ombudsman or de-designation as a Provider Agency of the Program.



**904: Reviewing and Remediating the Conflict of Interest****A. Responsibilities and principles**

The State Ombudsman shall determine whether actions may be taken to remedy an identified individual or organizational conflict. A conflict can be satisfactorily remedied only when the continued existence of the conflict does not compromise the ability of the Ombudsman to carry out his or her duties and is not likely to diminish the perception of the Program as an independent advocate for residents and participants.

**B. Reviewing the conflict of interest**

1. When a potential conflict is identified, the State Ombudsman shall review the circumstances of the potential conflict. The State Ombudsman shall determine:
  - a) whether a conflict of interest exists;
  - b) whether the conflict could be remedied by appropriate action by the individual or agency involved.
2. The Office shall inform the individual involved and the agency involved of the results of the review and may provide assistance.

**C. Remediating conflicts**

1. If the conflict can be remedied, the Regional Program shall, or in the case of a conflict within an AAA, the AAA shall:
  - a) develop a written plan within five (5) business days of identification of the conflict:
    - (1) which shall define the conflict and propose a remedy to eliminate, or
    - (2) to the greatest extent possible, minimize the impact of the conflict.
  - b) submit the proposed remedy to the Office for approval.
2. The Office shall:
  - a) review the proposed remedy and notify the Regional Program and AAA of approval, denial, or additional corrections needed in order for the potential conflict to be remedied.
  - b) respond within five (5) business days of notification of potential remedies.

**905: Failure to Identify or Remedy a Conflict of Interest**

- A. Failure on the part of an Ombudsman, Provider Agency, or AAA to identify and report to the Office a known conflict of interest shall be sufficient grounds for the refusal to designate or the subsequent de-designation of the Program or the refusal to certify or the subsequent de-certification of an Ombudsman.
- B. Existence of an unremedied conflict of interest shall be sufficient grounds for the de-designation of the Program, the provider entity, or the de-certification of an Ombudsman.
- C. Final decisions regarding sanctions to identify or remedy conflict of interest situations are determined by the State Ombudsman.