

**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, AAA's, 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 State Unit on Aging.

**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. Organizational conflicts

Conflicts which may arise from organizational location include, but are not limited to, Program placement in an agency that:

1. has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or of a provider of a long-term care services provided to medical assistance waiver and managed care organization participants;
2. is employed by or participates in the management of a long-term care facility;
3. has governing board members with ownership, investment or employment interest in long-term care facilities;
4. has direct involvement in the licensing or certification of a long-term care facility or long-term care services;
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;
6. administers/staffs the Adult Protective Services Program;
7. administers and/or provides care coordination or direct services for a state medical assistance wavier; or
8. provides direct services via contract with a managed care organization.

C. Individual Ombudsman conflicts

Potential conflicts for an Ombudsman include, but are not limited to, the following:

1. employment of an individual or a member of his/her immediate family by a long-term care facility or by the owner or operator of any long-term care facility, state medical assistance wavier provider, or managed care organization;

2. participation in the management of a long-term care facility, state medical assistance waiver provider, or managed care organization; by an individual or a member of his/her immediate family;
3. ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service, state medical assistance waiver provider, or managed care organization by an individual or a member of his/her immediate family;
4. involvement in the licensing or certification of a long-term care facility or provision of a long-term care service, state medical assistance waiver provider, or managed care organization by an individual or a member of his/her immediate family;
5. receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility, state medical assistance waiver provider, or managed care organization;
  - a. accepting money or any other consideration from anyone other than the Provider Agency or other entity designated by the State Ombudsman for the performance of an act in the regular course of a Ombudsman's duties;
  - b. provision of services with conflicting responsibilities while serving as a Ombudsman to a resident such as adult protective services; discharge planning; serving as a guardian, agent under power of attorney or other surrogate decision-maker for a long-term care resident in the service area; pre-admission screening or case management for long-term care residents;
  - c. serving residents of a facility in which a family member resides;
  - d. serving participants of a state medical assistance waiver in which a family member participates; or
  - e. serving participants of a managed care organization in which a family member participates.

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

- A. 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. Once certified, Ombudsmen and support staff shall immediately inform the Regional Ombudsman of all potential conflicts of interest.
  - 2. Disclosure of the conflict  
Persons seeking employment or certification as Ombudsman staff or volunteers shall disclose all potential conflicts of interest to the Regional Program
- B. Procedures for entities seeking or holding designation
  - 1. Identification of a conflict  
Agencies seeking or holding designation as Regional Programs shall screen upon certification and periodically thereafter each individual involved in or has authority over the Regional Program to identify individual conflicts of interest.
  - 2. Disclosure of the conflict  
Such persons shall disclose to the Provider Agency all potential conflicts of interest.
- C. AAA's contracting with an agency
  - 1. Identification of a conflict  
AAAs contracting with an agency to serve as a Regional Program shall periodically screen within the AAA each individual involved in or has authority over the Regional Program to identify individual conflicts of interest.
  - 2. Disclosure of the conflict  
Such persons shall disclose to the AAA all potential conflicts of interest
- D. Notification to the Office  
  
Agents 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.

E. Failure to disclose

Failure to disclose relevant information prior to accepting employment or certification within 15 business days may be grounds for termination of employment or of authority or certification 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 Department, in consultation with the Office, shall determine whether actions may be taken to remedy an identified 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 of interest was knowing or accidental; and
  - c. 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.

**C. Remediating conflicts**

If the conflict can be remedied, the Office shall:

1. develop a written plan within fourteen (14) calendar days of the completion of the review by the State Ombudsman; which shall identify the conflict and impose a remedy to eliminate, or to the greatest extent possible minimize, the impact of the conflict; and
2. in the case of an individual conflict, require the Regional Program to implement the recommended plan; or
3. in the case of an organizational conflict, require that the Provider Agency develop and implement policies and procedures that assure the Ombudsmen, as resident and participant directed advocates, can perform their duties fully and without interference.

**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 certification or the 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.