

LONG TERM CARE OMBUDSMAN PROGRAM Conflicts of Interest	DAIL – LTCOP – 16.15
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Policy Statement:

The organizational placement of the Long-Term Care Ombudsman Program (LTCOP) and the individuals who carry out the duties of the Program must be free from conflicts of interest.

Legal Authority: OAA § 712 (a) (5) (C) (ii), (f); proposed rule 45 CFR § 1324.21.

Procedure:

- (1) A conflict of interest exists in the LTCOP when other interests intrude upon, interfere with, or threaten to negate the ability of the LTCOP to advocate without compromise on behalf of long-term care facility residents. Types of conflict of interest include:
 - (a) Conflicts of loyalty – incentives, often related to financial or employment considerations, that shape ones judgment or behavior in ways that are contrary to the interest of residents;
 - (b) Conflicts of commitment – goals or obligations that direct ones time and/or attention away from the interest of residents; and
 - (c) Conflicts of control – limitations or restrictions that effectively foreclose ones ability to take actions to advocate for the interest of residents

- (2) Organizational conflicts of interest include, but are not limited to, placement of the Office, or requiring that an Ombudsman or representative of the Office perform conflicting activities, in an organization that:
 - (a) Is responsible for licensing, surveying, or certifying long-term care facilities;
 - (b) 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;
 - (c) 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;
 - (d) Has governing board members with any ownership, investment or employment interest in long-term care facilities;
 - (e) Provides long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;

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- (f) Provides long-term care coordination or case management for residents of long-term care facilities;
 - (g) Sets reimbursement rates for long-term care facilities;
 - (h) Provides adult protective services;
 - (i) Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;
 - (j) Conducts preadmission screening for long-term care facility placements;
 - (k) Makes decisions regarding admission or discharge of individuals to or from long-term care facilities; or
 - (l) Provides guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long-term care facilities.
- (3) DAIL and the KLTCO shall identify and take steps to remove or remedy conflicts of interest between the KLTCO and the State agency or other agency carrying out the Ombudsman program.
- (4) The KLTCO shall identify organizational conflicts of interest in the Ombudsman program and describe steps taken to remove or remedy conflicts within the annual report submitted through the National Ombudsman Reporting System.
- (5) The KLTCO and DAIL shall:
- (a) Take reasonable steps to avoid internal conflicts of interest;
 - (b) Review and identify internal conflicts;
 - (c) Take steps to remove or remedy conflicts;
 - (d) Ensure that no individual, or member of the immediate family of an individual, involved in the designating, appointing, otherwise selecting or terminating the KLTCO is subject to a conflict of interest; and
 - (e) Assure that the KLTCO has disclosed such conflicts and described steps taken to remove or remedy conflicts within the annual report submitted through the National Ombudsman Reporting System.
- (6) Where local Ombudsman entities provide Ombudsman services, the KLTCO shall:
- (a) Prior to designating or renewing designation, take reasonable steps to avoid conflicts of interest in any agency, which may host a local Ombudsman entity.
 - (b) Perform periodic review and identification of conflicts of interest with the local Ombudsman entity in any agencies hosting a local Ombudsman entity,

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- (c) Require that such agencies disclose identified conflicts of interest with the local Ombudsman entity and steps taken to remove or remedy conflicts within such agency to the KLTCO,
 - (d) Failure of an agency hosting a local Ombudsman entity to disclose a conflict to the Office or inability to adequately remove or remedy a conflict shall constitute grounds for refusal, suspension or removal of designation of the local Ombudsman entity by the KLTCO.
- (7) Individual conflicts of interest for an Ombudsman, representatives of the Office, and members of their immediate family include, but are not limited to, the following:
- (a) Employment of an individual or a member of his/her immediate family within the previous year by a long-term care facility in the area development district or by the owner or operator of any long-term care facility in the planning and service area;
 - (b) Participation in the management of a long-term care facility by an individual or a member of his/her immediate family;
 - (c) 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 by an individual or a member of his/her immediate family;
 - (d) Involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by an individual or a member of his/her immediate family;
 - (e) Receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by an individual or a member of his/her immediate family;
 - (f) Accepting gifts or gratuities 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);
 - (g) NOTE: A LTCO should adequately compensate a facility for food provided by the facility with the exception of sample portions of food tested as part of an investigative process.
 - (h) Accepting money or any other consideration from anyone other than the LTCO provider agency or other entity designated by the Office of the Kentucky Long-Term Care Ombudsman (KLTCO) for the performance of an act in the regular course of a LTCO's duties;

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- (i) Provision of services with conflicting responsibilities while serving as a LTCO, such as adult protective services; discharge planning; serving as guardian, agent under power of attorney or other surrogate decision-maker for a long-term care resident in the planning and service area; pre-admission screening or case management for long-term care residents; LTCO notarizing documents for residents;
- (j) Serving residents of a facility in which an immediate family member resides; (Immediate Family Member means the spouse, parents and grandparents, children and grandchildren, brothers and sisters, mother in law and father in law, brothers in law and sisters in law, daughters in law and sons in law, Adopted and step members are included in immediate family).

(8) Participating in activities, which:

- (a) negatively impact on the ability of the LTCO to serve residents, or
- (b) are likely to create a perception that the LTCO's primary interest is other than as a resident advocate

(9) Remediating Conflict:

(a) General

1. Where an actual or potential conflict of interest within the LTCOP has been identified, the KLTCO shall be notified. All agents of the Cabinet for Health and Family Services, AAAIL, provider agencies, and LTCO's have a duty to notify the KLTCO of any actual or potential conflict of interest of which they have knowledge.
2. The KLTCO shall determine whether appropriate actions may be taken to sufficiently remedy the conflict. A conflict can be sufficiently remedied only where the existence of the conflict does not interfere with any duties of the LTCOP and where the conflict is not likely to alter the perception of the LTCOP as an independent advocate for residents.

(b) Organizational conflicts Where organizational conflicts have been identified, the following steps shall be taken where the conflict can be sufficiently remedied:

1. A written remedial plan shall be developed within thirty (30) calendar days of identification of the conflict to the KLTCO.

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2. The remedial plan must identify the conflict and provide assurances, which shall minimize to the greatest extent possible the negative impact of the conflict on the LTCOP. Examples of such assurances could include:
 - a. The LTCOP will investigate complaints in an unbiased manner and independently determine actions to be taken in their resolution.
 - b. No agency employee or governing board member with a conflict of interest will be involved with or influence any decision to hire or terminate the employment of a LTCO.
 - c. Governing board members of the LTCO provider agency or AAAIL who have a conflict of interest:
 - d. Must disclose the conflict to the governing board and to the KLTCO;
 - e. May have no involvement with LTCO activities concerning the entity which is the source of the conflict; and
 - f. Must abstain from voting on issues related to the operation of the LTCOP
 - g. The agency's policies and procedures adequately set forth procedures to remedy conflicts of interest and ensure that the LTCO's can fulfill their duties without interference.
 - h. A memorandum of agreement exists between the LTCOP and another program, which provides services with conflicting responsibilities. Such a memorandum must adequately set forth the roles, responsibilities, and appropriate working relationships of the respective programs.

- (c) The remedial plan must be mutually agreed upon and signed by the agency in which the conflict exists and the KLTCO. If either party cannot agree to the plan, the conflict has not been sufficiently remedied.

- (d) Remedying individual ombudsman conflicts. Where individual conflicts have been identified, the following steps shall be taken where the conflict can be sufficiently remedied:
 1. Development of a written remedial plan
 - a. Where the individual is an applicant for a position as a District LTCO or LTCO staff, a plan shall be developed before the

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individual is hired for the position. The Conflict of Interest screening tool must be completed and submitted by the LTCO provider agency to the KLTCO prior to employing the individual. The provider must submit potential remedies to any conflict.

- b. Where the individual is an applicant for certification as a LTCO volunteer, a plan shall be developed before the individual takes any actions on behalf of the LTCOP.
- c. Where the individual is a LTCO staff or volunteer, a plan shall be developed within thirty (30) calendar days of identification of the conflict to the KLTCO.

2. The remedial plan must identify the conflict and provide assurances, which shall minimize to the greatest extent possible the negative impact of the conflict on the LTCOP. An example of such an assurance could include:

- a. Prohibiting the LTCO with a conflict of interest from serving the residents of the facility with which he/she has a conflict and arranging for another staff LTCO to serve those residents. Where appropriate, this arrangement could be time-limited.
- b. The remedial plan must be mutually agreed upon and signed by the LTCO provider agency, the LTCO or applicant with the conflict of interest, the LTCO Coordinator, if applicable, and the KLTCO.

(10) Volunteer Ombudsmen are not permitted to serve residents in facilities with which they have a conflict of interest. The KLTCO may delegate to an District Ombudsman the authority to:

- (a) consider the conflicts of interest of an individual who wishes to serve as a Certified Ombudsman or Friendly Visitor; and
- (b) determine whether conflicts exist which may impede the ability of the Certified Ombudsman or Friendly Visitor to fulfill the duties of that position or may alter the perception of the LTCOP as an independent advocate for residents; if such a conflict exists, the individual cannot serve as a Certified Ombudsman and/or Friendly Visitor

(11) Avoid Conflicts of Interest: Persons seeking certification as ombudsman and friendly visitors

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- (a) The LTCO provider agency shall screen all persons seeking certification as LTCO staff or volunteers to identify any actual or potential individual conflicts of interest. The LTCO provider agency shall submit evidence of such screen to the KLTCO. The KLTCO may periodically request the LTCO provider agency to perform a conflict of interest screen of currently certified LTCO staff or volunteers.
 - (b) All persons seeking employment or certification as a LTCO staff or volunteer, shall disclose to the LTCO provider agency all information relevant to past employment, membership, or interests that may affect, or could reasonably be expected to affect, that individual's ability to carry out duties of a LTCO without conflicting interest.
- (12) Ombudsman Involvement in Activities. In determining whether LTCO participation in local groups, professional associations, or other activities constitutes a conflict of interest, the following questions shall be considered:
- (a) Will the LTCO benefit from LTCO involvement in this activity?
 - (b) Will the LTCO be able to represent and assert the views of long-term care residents in this activity?
 - (c) Will the role of the LTCO in this activity benefit residents?
 - (d) How will participating in the activity affect the public perception and the resident's perspective of the LTCOP?
 - (e) Will the LTCO be in a position of participating in a decision about a resident without the resident's involvement or permission?
- (13) Failure to Identify or Remedy a Conflict of Interest:
- (a) Failure on the part of a LTCO, LTCO provider agency, to identify and report to the KLTCO a known conflict of interest shall be sufficient grounds for refusal to designate or de-designate of a LTCOP and/or certify or de-certify of a LTCO.
 - (b) Existence of an unresolved conflict of interest shall be sufficient grounds for the de-designation of the LTCOP.
 - (c) Failure on the part of a LTCO to identify and report to the KLTCO a known conflict of interest shall be sufficient grounds for the withdrawal of the certification of the LTCO.