

173-14-15

Conflicts of interest.**(A) Definitions for this rule:**

- (1) "Financial interest" means an ownership interest or investment in a provider by a representative of the office or the immediate family member of the representative of the office.
- (2) "Remedy" means an action, restriction of action, restriction of contact, or other means proposed to the SLTCO that would neutralize a conflict of interest and ensure the conflict shall not adversely influence the activities of the representative on behalf of the office.
- (3) "Waiver" means the SLTCO has determined sufficient circumstances exist to eliminate a conflict of interest and the need to remedy a conflict of interest.

(B) No employee or representative of the office, no individual involved in designating, hiring, evaluating, or terminating the head of any regional program, and no policy board members may have an unremedied conflict of interest. Conflicts of interest ~~shall~~ include, but ~~shall~~ are not ~~be~~ limited to, the following:

- (1) Direct involvement in the licensing or certification of a long-term care provider during the last two years.
- (2) Ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care provider during the last two years.
- (3) Employment by a long-term care provider or by the owner or operator of any long-term care provider during the last two years.
- (4) Participation in the management of a long-term care provider during the last two years.
- (5) 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 provider.
- (6) Accepting gifts or gratuities of significant value from a long-term care provider or its management, a long-term care consumer or a consumer's sponsor (except where there is a personal relationship with a consumer or consumer's sponsor which is separate from the individual's role as a representative of the office.

- (7) Accepting money or any other consideration from anyone other than the office or sponsoring agency for the performance of an act in the regular course of the duties of the representative.
 - (8) Serving as a guardian, conservator, or in another fiduciary or surrogate decision-making capacity for a consumer of long-term services and supports where the representative provides ombudsman services.
 - (9) Having an immediate family member receiving long-term services and supports.
- (C) Actions prohibited by someone holding a conflict of interest shall include, but shall not be limited to, actions taken to influence any decision or action of a representative of the office which could be characterized as interference with or reprisals against a representative, or as causing reticence on the part of a representative to pursue vigorously a complaint or concern of a client.
- Absent a waiver granted by the SLTCO, no representative of the office shall be permitted to provide core ombudsman services involving a long-term care provider with which the representative was formerly employed, with which the representative was formerly or is currently affiliated or associated, from which an immediate family member receives long-term care services, or that poses any other conflict of interest.
- (D) The SLTCO, the regional programs, and the sponsoring agencies shall screen potential and existing non-representative employees of the program, potential candidates and existing representatives of the office, individuals involved in designating, hiring, evaluating, or terminating the head of any regional program, and potential and existing policy board members for conflicts of interest. The screen shall be applied initially and annually thereafter. When completed, the person who conducted the screen and the person screened shall acknowledge the completion of the screen in writing or electronically. The completed screening instrument and a ~~resume~~ résumé shall be ~~transmitted to the state office~~ entered into the electronic ombudsman registry and made a record of the program and shall be subject to program review.
- (E) Before offering an ombudsman position to an applicant or training a volunteer, the sponsoring agencies and/or regional program directors shall report any identified conflict of interest, and may propose a remedy, to the SLTCO. The SLTCO shall report any identified conflict of interest in the state office and propose a remedy to ODA's director. Within five business days after receiving a proposed remedy, the SLTCO or ODA's director shall review the nature, scope, and extent of the conflict and shall determine whether or not to allow the proposed remedy.

The proposed remedy shall be ~~submitted to the SLTCO in writing~~ entered into the electronic ombudsman registry and shall reveal the nature, extent, and potential

impact of the conflict of interest, and shall be a remedy that neutralizes the conflict of interest. Current employment with any type of provider is a conflict of interest that cannot be remedied. Any remedy granted shall remain in effect for as long as the conflict continues to exist to the same extent as reported and for as long as the remedy continues to work. ~~If the state office implements an electronic registry, submission~~ Submission of conflict of interest screens and proposed remedies or waiver requests shall be ~~made through~~ entered into the electronic ombudsman registry.

Examples of remedies which may be approved include, but are not limited to, remedies that assure the following:

- (1) The independence of the representative of the office to provide unbiased investigations, successful problem resolution, advocacy services, and other ombudsman services.
 - (2) That no employee, representative of the office, or policy board member having a conflict of interest is involved with or influences any decision to hire, appoint, evaluate, or terminate a representative of the office.
 - (3) That no employee, representative of the office, or policy board member having a conflict of interest is involved with or influences the designation of any regional program.
 - (4) That no policy board members having a conflict of interest in their capacity as board members are involved in a complaint being handled by the program involving the entity that is the source of the conflict of interest.
 - (5) That any policy board members having a conflict of interest in their capacity as board members shall declare any conflict of interest ~~as regards~~ regarding a complaint or advocacy issue, and shall excuse themselves from deliberations and voting on the issue.
 - (6) That the policy board's by-laws, the organization's position descriptions, and personnel policies reflect procedures to identify and remedy conflicts of interest and ensure independence of action for the program and its representatives.
- (F) Before offering an ombudsman position to an applicant or training a volunteer, the sponsoring agencies and/or regional program directors shall report any identified conflict of interest ~~to~~, and may request a waiver of a conflict of interest, ~~in writing, to from~~ from the SLTCO in the electronic ombudsman registry, or in the case of the SLTCO making the request, ~~to from~~ from ODA's director. Within five business days after receiving a waiver request, the SLTCO or ODA's director, as appropriate, shall review the nature, scope, and extent of the conflict and shall determine whether or not to approve

the waiver. A waiver request shall reveal the nature, extent, and potential impact of the conflict of interest, and shall request to determine whether sufficient circumstances exist to eliminate a conflict of interest.

- (1) Any conflict of interest not waived or remedied, and any prohibition resulting therefrom, shall be recorded in the ~~central~~ electronic ombudsman registry.
- (2) The SLTCO may take into consideration the following when determining whether to grant a waiver:
 - (a) The length of time an individual was affiliated with a provider.
 - (b) The view of the SLTCO of the objectivity of the individual.
 - (c) The position held by the individual when working for a provider.
 - (d) The change in the ownership and/or management of a facility and the length of time since the change in ownership and/or management.
- (G) No representatives of the office shall be required or permitted to hold positions or perform duties that would constitute a conflict of interest.
- (H) Deliberate failure to disclose any conflict of interest or any prohibition shall be sufficient grounds for the removal of the candidate from the professional development program, the decertification of the representative, or the withdrawal of the designation of the regional program involved.

Effective: 1/28/2022

Five Year Review (FYR) Dates: 10/4/2021 and 11/30/2026

CERTIFIED ELECTRONICALLY

Certification

01/18/2022

Date

Promulgated Under: 119.03

Statutory Authority: 121.07, 173.01, 173.02, 173.16; 42 U.S.C. 3025,
3058g; 45 C.F.R. 1321.11, 1324.11, 1324.13, 1324.15

Rule Amplifies: 173.16; 42 U.S.C. 3058g; 45 C.F.R. 1321.11, 1324.11,
1324.21

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