

TO BE RESCINDED

173-14-15 **Conflicts of interest.**

(A) As used in this rule:

- (1) "Financial interest" means an ownership interest or investment in a provider by a representative of the office or a relative of the representative of the office,
- (2) "Relative" means a member of the immediate family, which is the spouse, parents, children, siblings, or household member.
- (3) "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 that the conflict will not adversely influence the activities of the representative on behalf of the office.
- (4) "Waiver" means the SLTCO has determined that 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 not be limited to, being employed by a provider of long-term care services at any time within the two years prior to being employed by or affiliated with the office of the long-term care ombudsman; or being affiliated with or having a financial interest in a provider of long-term care services or a membership organization of long-term care providers; or standing to gain financially through an action brought on behalf of individuals whom the ombudsman serves.

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 assigned to investigate a complaint concerning 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 a relative receives long-term care services, or that poses any other conflict of interest.

(C) The SLTCO, the regional programs, and the sponsoring agencies shall develop for their respective programs procedures to 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 procedures shall be applied upon initial screening and annually thereafter. When completed, the person who conducted the screen and the person screened shall acknowledge the completion of the screen in writing. The completed screening instrument shall be made a record of the program and shall be subject to program review.

- (D) Prior to 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 propose a remedy to, the SLTCO. The SLTCO shall report any identified conflict of interest in the state program and propose a remedy to the director of the department of aging. Within thirty days of receiving a proposed remedy, the SLTCO or the director of the department of aging shall review the nature, scope, and extent of the conflict and shall determine whether or not to allow the proposed remedy. While the decision is pending, the program responsible shall assign any individual with a conflict of interest to duties that do not pose a conflict.

The proposed remedy shall be submitted in writing and shall reveal the nature, extent, and potential impact of the conflict of interest, and shall be a remedy which will neutralize 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.

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

- (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 a board members will declare any conflict of interest as regards a complaint or advocacy issue, and will excuse themselves from deliberations and voting on the issue, and review of the case records; and,
 - (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.
- (E) Prior to 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 the SLTCO, or in the case of the SLTCO making the request, to the director of the department of aging. Within thirty days of receiving a waiver request, the SLTCO or the director of the department of aging, 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 will reveal the nature, extent, and potential impact of the conflict of interest, and will ask 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 registry.
 - (2) The SLTCO may take into consideration the following when determining the granting of 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; and,
 - (d) The change in the ownership/management of a facility and the length of time since the change in ownership/management.
- (F) 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:

Five Year Review (FYR) Dates: 1/30/2018

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 173.01, 173.02; 42 U.S.C. 3025(a)(1)(C), 3058g(a)(5) (D); 42 C.F.R. 1321.11, 1324.11(e)(4), 1324.13(b)(1), 1324.15(b)
Rule Amplifies: 173.15; 42 U.S.C. 3058g; 45 C.F.R. 1324.11(e)(4), 1324.21.
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