



2016 Older Americans Act Reauthorization Frequently Asked Questions

Q. How does the revised language in section 712(f) (regarding LTC Ombudsman programs and conflict of interest) alter the requirements to states regarding conflicts of interest as set forth in 45 CFR 1324.21?

A. State agencies must follow the requirements of the statute, including, but not limited to, the following provisions which are not incorporated into the Rule:

- Ensuring that the Ombudsman is not employed by or participating in a “related organization” (i.e. related to long-term care facilities) and has not been employed by such organization within 1 year. Sec. 712(f)(1)(C).
- Identifying, reporting, and remedying conflicts of interest related to long-term care services generally, not only related to facilities (Sec 712(f)(2)(A)(iii)-(v)). ACL plans to make changes to the National Ombudsman Reporting System consistent with this reporting requirement.

No revision of the conflict of interest provisions of the LTC Ombudsman Program Rule is anticipated at this time, as the provisions of 45 CFR 1324.21 regarding conflicts of interest are sufficiently consistent with the 2016 OAA Reauthorization. The following discussion provides additional detail about the distinctions between the Act and the Rule related to organizational conflicts of interest:

The Act prohibits the State agency from operating the Office or carrying out the program, directly, or by contract or other arrangement with another entity, where there is an organizational conflict of interest unless the State agency has identified the conflict, disclosed the conflict to the Assistant Secretary for Aging and remedied the conflict. Sec. 712(f)(2)(B).

Both the Act and the Rule provide a list of examples of organizational conflicts of interest, and State agencies are required to address each of these examples in their policies and procedures for identifying, disclosing, removing and/or remedying organizational conflicts of interest. While these examples are similar, they are not identical. These differences are as follows:

Conflict of interest example	Older Americans Act	LTC Ombudsman Rule
Long-term supports and services (LTSS) regulation	Responsible for licensing, certifying, or surveying long-term care <u>services</u> in the State. Sec. 712(f)(2)(i),	Responsible for licensing, surveying, or certifying long-term care <u>facilities</u> . 45 CFR 1324.21(a)(1)
Providing LTSS	Provides long-term care <u>services, including programs carried out under a Medicaid waiver</u> . Sec. 712(f)(2)(iii)	Provides long-term care to residents of long-term care <u>facilities</u> , 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. 45 CFR 1324.21(a)(5)
LTSS case management	Provides long-term care case management. Sec. 712(f)(2)(iv)	Provides long-term care coordination or case management for <u>residents of long-term care facilities</u> . 45 CFR 1324.21(a)(6)
LTSS rate setting	Sets rates for long-term care services. Section 712(f)(2)(v)	Sets reimbursement rates for long-term care facilities. 45 CFR 1324.21(a)(7)

Additionally, it is important to note that the Rule creates an absolute prohibition (i.e. does not provide opportunity for a remedy) for the following organizational conflicts of interest:

- Is responsible for licensing, surveying or certifying long-term care facilities;
- Is an association of long-term care facilities; or
- Has any ownership, operational, or investment interest in a long-term care facility.
45 CFR 1324.21(b)(3).

States with questions about the application of requirements of the Act or the Rule are advised to seek technical assistance from their respective ACL state liaison.

NOTE: ACL amended this response with additional details as of September 28, 2016.