

**2020 SMP/SHIP
National Conference**

July 21-23, 2020



MANAGING CONFLICTS OF INTEREST

GUIDANCE FOR SHIP/SMP/MIPPA GRANTEES

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July 23, 2020

12:45-1:45 pm ET

Agenda

- Understanding Conflicts of Interest
- ACL OHIC Conflict of Interest Workgroup
- Overview of Workgroup Decisions
- Introduction of Conflict of Interest Guidance Documents
- Questions

Poll 1

- Are you aware of contracts with plans happening in your area? (can select multiple)
 - Yes, within my organization
 - Yes, with my partners
 - Yes, but with those I don't work with
 - No

Poll 2

- Have you dealt with conflicts of interest in the past?
 - Yes
 - No
 - I'm not sure

Understanding Conflicts of Interest

Where are new conflicts arising?

What are the roles and responsibilities of OHIC grantees, partners, and team members?

The New Medicare Advantage Landscape

- Integrated Care Models = Provide Medicare and Medicaid benefits through a single delivery system:
 - PACE, D-SNPs, Financial Alignment Initiative, etc.
- Special Supplementation Benefits for the Chronically Ill = Expansion of plan benefits to include items or services not typically provided:
 - Meals, Transportation, Home modifications, etc.

The Importance of Business Acumen Initiatives

- What is Business Acumen?
 - Definition: Keenness and quickness in dealing with and understanding a business situation in a manner that is likely to lead to a good outcome.
- AAAs and other community-based partners are financially motivated to find new sources of revenue
- These new Medicare policies provide greater opportunities for network agencies to partner with MA plans

Exploring OHIC Grantee Conflicts

- All OHIC grant programs (SHIP, SMP, and MIPPA) are tasked to provide **unbiased assistance** to Medicare beneficiaries, their families, and caregivers.

SHIP Statute states:

- Grantees must “provide assurances that staff members (including volunteer staff members) of the health insurance information, counseling, and assistance program have no conflict of interest in providing the counseling”

VRPM Policy 3.35 Conflict of Interest (Required)

No person who has a conflict of interest in connection with the work they will do at the SMP/SHIP, whether personal, philosophical, or financial may serve as a volunteer. Volunteers do not promote any personal or business interest while undertaking their SMP/SHIP assignment.

One example of persons with an inherent conflict of interest is anyone who receives compensation for enrolling beneficiaries in a specific insurance plan or plans.

What this means*

- A conflict of interest is an interest that prevents, or could prevent, a person from performing some task objectively.
- SMP/SHIP volunteers must be neutral, objective, unbiased.
- Conflicts can be actual or simply the appearance of conflict.
- A conflict might exist for the volunteer, a family member, or a business interest connected to a potential volunteer.
- Most conflict questions show up during the application process, but they can occur at any time if the volunteer changes their situation.

*Pulled from Center webinar conducted April 2019

OHIC Conflict of Interest Workgroup

Overview and Recap

Workgroup Composition

- ACL Staff – representing many applicable programs
- National partners – representing national business acumen efforts
- SHIP & SMP National Resource Centers
- SHIP and SMP Directors and Team Members

Workgroup Members

- Rebecca Kinney
- Marissa Whitehouse
- Melissa Simpson
- Maggie Flowers
- Kristie Kulinski
- Lauren Solkowski
- Amy Wiatr-Rodriguez
- Jennifer Throwe
- Vicki Gottlich
- Elliott Kennedy
- Louise Ryan
- Ginny Paulson
- Nicole Liebau
- Karol Tapias
- Marisa Scala-Foley
- Kim Lauder
- Melinda Munden
- Robert Kellerman
- Rona McNally
- Lisa Rose
- Kelly Clarkson
- Clayton Davis
- Heidi Alley
- Jennifer Throwe
- Kristin Overton
- Kevin Robertson
- Kristin Overton
- Courtney Williams
- Mari De Leon
- Katie Carlson
- Kim Latta
- Breda Moran
- Brooke Jansen
- Karen Webb
- Mary Lipovan

Timeline & Overview

- **Announced** efforts and workgroup at 2019 SMP/SHIP Conference in July 2019
- **Met** September 2019 – April 2020
- **Brainstormed** existing and potential conflicts of interest within our networks and possible solutions to these COI.
- **Identified** possible new resource ideas and necessary updates to existing resources.
 - Based our initial resource ideas off of The National Long-Term Care Ombudsman Resource Center’s LTCOP Organizational COI– Examples of Identification, Remedies, and Removal Local Ombudsman Entities (LOEs) (Thank you!)
- **Created** COI: Identification, Remedy, and Removal Resource including terminology, related policies, and decision tree.

OHIC Conflict of Interest Workgroup Decisions

Exploring a few examples

COI Example: Insurance Agents

Example:

Mary (SHIP Team Member) maintains her licensure as a Generic Insurance Company agent for her side job that she works on nights and weekends. She never uses SHIP hours to do Generic Insurance Company work and vice versa.

COI:

Licensed insurance agent/broker acting as SHIP/SMP/MIPPA Team Member.

Steps Toward Identification:

- Is individual an active SHIP/SMP Team Member?
- Is individual a licensed insurance agent/broker? Is individual actively working in the relevant insurance industry? If not, how long ago did individual discontinue this work?

COI Example: Insurance Agents

Best Practices:

- SHIP/SMP/MIPPA screens for insurance agent licensure prior to accepting new Team Members.
- SHIP/SMP/MIPPA rescreens at regular intervals in accordance with their VRPM policies and procedures.

Examples of Remedy or Removal:

Implementation of one or more remedy tactic(s) below will lessen but may not eliminate conflict or risk. Consult with ACL Project Office to ensure adequate mitigation steps are under way.

No individual may be a licensed insurance agent and a SHIP/SMP/MIPPA Team Member at the same time. This is a violation of the SHIP Statute (see Addendum C).

At least one of the following tactics must be implemented in order to remove the conflict and proof of all actions must be documented:

1. Removal of insurance license before SHIP/SMP/MIPPA Team Member acceptance.
2. Removal or prohibition of Team Member status as the SHIP/SMP/MIPPA cannot ensure the Team Member will be able to perform their program duties in an unbiased manner.

COI Example: Sharing Staff

Example:

Townville Area Agency on Aging (TAAA) maintains 3 staff members who work 20 hours per week providing case management services for a contract TAAA holds with Generic Insurance Company. TAAA requires these same three staff members to provide SHIP services with the other 20 hours of their time.

COI:

CBO combining staffing for SHIP/SMP/MIPPA and business acumen activities (i.e. Team Members expected to spend time on activities that support both programs)

COI Example: Sharing Staff

Steps Toward Identification:

- Does CBO employ active SHIP/SMP/MIPPA Team Member(s)?
- Does CBO expect SHIP/SMP/MIPPA Team Member(s) to spend a portion of their total FTEs on business acumen-related activities?
- Are the business acumen activities supported by funding from a health insurance plan/s?
- What funding source(s) support these positions (SHIP/SMP/MIPPA and/or plan funds)?
- What funding sources are used to support the supervisors/chain of command?

Best Practices:

- Organizations housing both SHIP/SMP/MIPPA and business acumen activities prepare and implement annual firewall/delineation of activities plan including proof of FTE billing and submit as ACL documentation.

COI Example: Sharing Staff

Examples of Remedy or Removal:

This is a conflict if the business acumen work is supported by a health insurance plan. At least one of the following tactics must be implemented in order to remove conflict and proof of all actions must be documented:

1. Mandatory: Ensure no SHIP/SMP/MIPPA Team Member is ever in position which is partially or fully supported by plan contract/funds.
2. Requirement that firewalls be put in place between SHIP/SMP/MIPPA work and plan contracted work.
3. Prohibit cross-training and expectations between SHIP/SMP/MIPPA work and any work with the plans.
4. More frequent/thorough federal/ state monitoring of work plan/ budget when business acumen activities crossover with SHIP/SMP/MIPPA work.

Note: Agency does not need to be excluded from SHIP/SMP/MIPPA as long as appropriate firewalls and/or remedy/removal strategies are put in place when health insurance plans are involved in the business acumen activities

Additional Potential COI Types

- Former or retired insurance agent/broker.
- Immediate family member with financial connection to plan/health system/provider group.
- CBO has contract with insurance plan ("shared front door").
- CBO has contract with health system or provider group.
- Receiving compensation or other benefits from plan (outside of their role within the program/agency) or showing favoritism.
- Event or materials cobranded with plan.
- Event or materials sponsored by plan.
- Participating in a plan organized and sponsored event.
- Events including plan as exhibitor.
- Insurance agent serving as primary trainer Team Members.
- Insurance agent providing training to general public regarding SHIP/SMP/MIPPA.
- SHIP/SMP/MIPPA training agents, brokers, or plan representatives.

OHIC Conflict of Interest Guidance & Technical Assistance Documents

Introduction

ACL Website Location

- Managing Conflicts of Interest in SHIP, SMP, and MIPPA Programs
 - <https://acl.gov/programs/senior-medicare-patrol/managing-conflicts-interest-ship-smp-and-mippa-programs>
- You can access this page via the SHIP and SMP pages on ACL.gov.

Conflict of Interest: Identification, Remedy, and Removal

State Health Insurance Assistance Program (SHIP), Senior Medicare Patrol (SMP) Program, and Medicare Improvements for Patients and Providers Act (MIPPA) Program

Overview

As the Medicare population grows, the networks serving them continue to feel conflicting pressures as they seek to serve as many individuals as possible, adhere to federal funding and policy requirements, and identify innovative funding streams. Organizations that house the SHIP, SMP, and MIPPA programs must be especially conscientious in navigating these pressures, as their Team Members are tasked with providing unbiased, objective information to Medicare-eligible individuals on their health insurance options.

This document provides technical assistance to SHIP/SMP/MIPPA programs and their partner Community-Based Organizations (CBOs) on how to avoid actual and perceived Conflicts of Interest (COI) and mitigate risk. The Administration for Community Living's (ACL) Office of Healthcare Information and Counseling's (OHIC) intention in preparing this resource is not to be prescriptive, as we know that each state and scenario is different, but instead to provide identification and remedy or removal strategies to help support grantees' risk mitigation efforts. Nor is this document intended to discourage grantees or CBOs from forming new partnerships or contracts when appropriate. The purpose of this document and related technical assistance is to support grantees in identifying and mitigating risks in administering their SHIP/SMP/MIPPA programs. Responsibility for managing conflict of interest risk falls on the SHIP/SMP/MIPPA grantee, not upon ACL. All information provided within this resource impacts not only the direct SHIP/SMP/MIPPA grantees, but also each entity receiving sub-awarded or pass through funding.

In considering the appointment of an individual as a SHIP/SMP/MIPPA Team Member or pursuing a new relationship with a partner entity, it is best practice for the organization or employing agency to:

- (i) Take reasonable steps to avoid employing or appointing an individual who has an unremedied conflict of interest or who has a member of the immediate family with an unremedied conflict of interest;
- (ii) Take reasonable steps to avoid assigning an individual to perform duties which would constitute an unremedied conflict of interest;
- (iii) Establish a process for periodic review and identification of conflicts;
- (iv) Establish proactive policies and contract language that protect the federal programs' interests; and
- (v) Take steps to remove or remedy known conflicts immediately.

As potentially problematic scenarios arise, it is important that you seek to understand the situation, educate all involved, and formulate a mitigation plan along with your ACL OHIC project officer and either the SHIP Technical Assistance (TA) Center or SMP Resource Center. **Whether potential conflicts of interest are actual or perceived, it is essential that grantees pursue solutions that preserve the integrity and unbiased nature of the SHIP/SMP/MIPPA programs.** Even the appearance of a COI should be avoided at all costs. Many situations will not fit neatly into one of the scenarios included within this document. When in doubt, contact your ACL OHIC project officer, the SHIP TA Center, or SMP Resource Center for technical assistance on how to proceed. **In accordance with the Conflict of Interest Decision Tree, risk mitigation plans should be established along with a state's assigned ACL OHIC Project Officer and kept up-to-date and on file.** Technical Assistance requests can be sent to OHIC@ACL.hhs.gov.

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Conflict of Interest Identification, Remedy, & Removal

* Indicates additional information included in 'Terminology' section of resource.

	Conflict of Interest	Conflict Type			Conflict Entity		Example	Steps Toward Identification/ Best Practices to Avoid This Type of COI	Examples of Remedy or Removal Implementation of one or more remedy tactic(s) below will lessen but may not eliminate conflict or risk. Consult with ACL Project Office to ensure adequate mitigation steps are under way.
		Loyalty	Commitment	Control	Indiv./ Group	Org./ Agency			
1	Licensed insurance agent/broker acting as SHIP*/SMP*/MIPPA* Team Member*.	X	X	X	X		<p>Mary (SHIP Team Member) maintains her licensure as a Generic Insurance Company agent for her side job that she works on nights and weekends. She never uses SHIP hours to do Generic Insurance Company work and vice versa.</p>	<ul style="list-style-type: none"> Is individual an active SHIP/SMP Team Member? Is individual a licensed insurance agent/broker? Is individual actively working in the relevant insurance industry? If not, how long ago did individual discontinue this work? <p>Best Practice (BP): SHIP/SMP/MIPPA screens for insurance agent licensure prior to accepting new Team Members. BP: SHIP/SMP/MIPPA rescreens at regular intervals in accordance with their VRPM policies and procedures.</p>	<p>No individual may be a licensed insurance agent and a SHIP/SMP/MIPPA Team Member at the same time. This is a violation of the SHIP Statute (see Addendum C).</p> <p>At least one of the following tactics must be implemented in order to remove the conflict and proof of all actions must be documented:</p> <ol style="list-style-type: none"> 1. Removal of insurance license before SHIP/SMP/MIPPA Team Member acceptance. 2. Removal or prohibition of Team Member status as the SHIP/SMP/MIPPA cannot ensure the Team Member will be able to perform their program duties in an unbiased manner.
2	SHIP/SMP/MIPPA Team Member is a former/retired insurance agent/broker.	X			X		<p>Janet just applied to become a new SHIP Team Member and she recently retired from a career as an insurance agent.</p>	<ul style="list-style-type: none"> Is individual an active SHIP/SMP/MIPPA Team Member? How long ago did individual discontinue work as insurance agent/broker? Can individual confidently confirm that they are able to remain unbiased in their SHIP/SMP/MIPPA duties? Could there be unknown biases? <p>BP: SHIP/SMP/MIPPA provides new Team Members mentoring and shadowing and all Team Members regular periodic monitoring to monitor for bias and training needs.</p>	<p>At least one of the following tactics must be implemented in order to remove the conflict and proof of all actions must be documented:</p> <ol style="list-style-type: none"> 1. Removal of Team Member as the SHIP/SMP/MIPPA cannot ensure the Team Member will be able to perform their program duties in an unbiased manner. 2. Focused training of Team Member to ensure adherence to expectations/ requirements related to bias.

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Addendum A: Conflict of Interest Terminology

Abbreviation/Term	Definition/Supporting Details
Area Agency on Aging (AAA)	A public or private non-profit agency designated by the state to address the needs and concerns of all older persons at the regional and local levels. AAAs coordinate and offer services that help older adults and individuals with disabilities remain in their homes - if that is their preference - aided by services and supports to make independent living a viable option. AAAs often provide SHIP/SMP/MIPPA services, as well as other programs serving older adults and individuals with disabilities, to a geographic area.
Administration for Community Living (ACL)	The Administration for Community Living was created around the fundamental principle that older adults and people of all ages with disabilities should be able to live where they choose, with the people they choose, and with the ability to participate fully in their communities. By funding services and supports provided by networks of community-based organizations, and with investments in research, education, and innovation, ACL helps make this principle a reality for millions of Americans. ACL provides and administers funding to SHIP/SMP/MIPPA programs nationally, as well as, funding to states, AAAs, and Centers for Independent Living to provide direct services. ACL also administers funding to be used toward business acumen-related activities.
Business Acumen	<p>Business acumen refers to the critical skills that aging and disability organizations must possess in order to enhance the effectiveness, efficiency, and sustainability of the services they provide. These skills include: building relationships with health care providers, insurers, and other payers; pricing and billing for services; negotiating contracts; describing the value (both financial and quality of life) of services; and data management (including interoperable data systems and reporting to payers).</p> <p>The goal is to help states and community-based organizations develop innovative business models and tap into new revenue streams that enable them to market their services, compete in a changing marketplace, ensure funding for services, and help payers to achieve quality goals and cost savings.</p>
Community-Based Organization (CBO)	Local organizations that offer community living services and supports to advance the health, well-being, independence, and community participation of older adults and people with disabilities. Frequently receive funding from state aging and/or insurance agencies to support SHIP/SMP/MIPPA programs.
Cobranding	Marketing of a product or service under two or more brand names.
Conflict of Interest (COI)	<p>[def]: a conflict between the private interests and the official responsibilities of a person in a position of trust</p> <p>[def2]: a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.</p> <p>[def3]: a conflict between competing duties.</p> <p>https://www.merriam-webster.com/dictionary/conflict%20of%20interest</p>

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Addendum B: Related policies as they currently appear in VRPM

ACL OHIC also plans to prepare interim additions to Volunteer Risk & Program Management (VRPM) policies and procedures to help support the recommendations made within the document. A workgroup will be formed to help identify needed updates to the VRPM document in full and updates will be available in 2021. An on-going workgroup will also be formed to brainstorm possible remedy recommendations for problematic COI situations. Please keep in mind, as COI issues continue to evolve, this will remain a working document with period updates released as needed.

For reference, below are the current VRPM policies that relate to COI:

3.35: Conflict of Interest [Required]

- Policy: No person who has a conflict of interest in connection with the work they will do at the SMP/SHIP, whether personal, philosophical, or financial may serve as a volunteer. Volunteers do not promote any personal or business interest while undertaking their SMP/SHIP assignment. One example of persons with an inherent conflict of interest is anyone who receives compensation for enrolling beneficiaries in a specific insurance plan or plans.
- Rationale: Given the sensitive nature of SMP/SHIP work, the need for objectivity, and the ever-present possibility of fraud and abuse, even inside the SMP/SHIP, the screening of volunteers must be done carefully to avoid a conflict of interest or a perceived conflict of interest.
- Suggested Procedures: SMP/SHIP volunteers sign a conflict of interest statement and agree to immediately notify their designated supervisor if any potential conflict arises during performance of their duties. All possible conflicts of interest are immediately reported by volunteers to their supervisor. SMP/SHIP can attempt to resolve conflicts of interest through, for example, changes of volunteer duties or changes of volunteer role. If a conflict of interest cannot be resolved, the volunteer may be relieved of duty.

3.101: Acceptance of honoraria [Required]

- Policy: Honoraria offered to SMP/SHIP volunteers are respectfully and tactfully declined, citing, as needed, this policy as the basis for their action. Honoraria which is given to the SMP/SHIP program may be accepted by the volunteer on behalf of the SMP/SHIP.
- Rationale: It is not appropriate for SMP/SHIP volunteers to benefit materially from their work duties.
- Definition: SMP/SHIP volunteers perform work functions (e.g., speeches, presentations, training, etc.) which may, from time to time, attract honoraria. Exempted from this policy are one-time speaker's gifts that can reasonably be regarded as small or token and where the nominal value received by any one person is under \$15.00.

3.105 Financial transactions with clients [Required]

- Policy: SMP/SHIP volunteers do not enter into financial transactions with beneficiaries, their family members or caregivers, either lending or borrowing in either direction.
- Suggested Procedure: If clients are in immediate financial need, the coordinator of volunteers is notified and referral is made to appropriate community services.

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Addendum C: SHIP Statute

The SHIP statute provides the justification, overview, and expectations for the State Health Insurance Program. The statute is also the base for which the entire program has been developed and managed. The full statute, Section 4360 – Health Insurance Information, Counseling, and Assistance Grants of 42 USC 1395b-4, can be found here: https://www.ssa.gov/OP_Home/comp2/F101-508.html. The portion of the statute relevant to conflicts of interest has been excerpted and highlighted below (42 USC 1395b-4, Section 4360 (b) (2)):

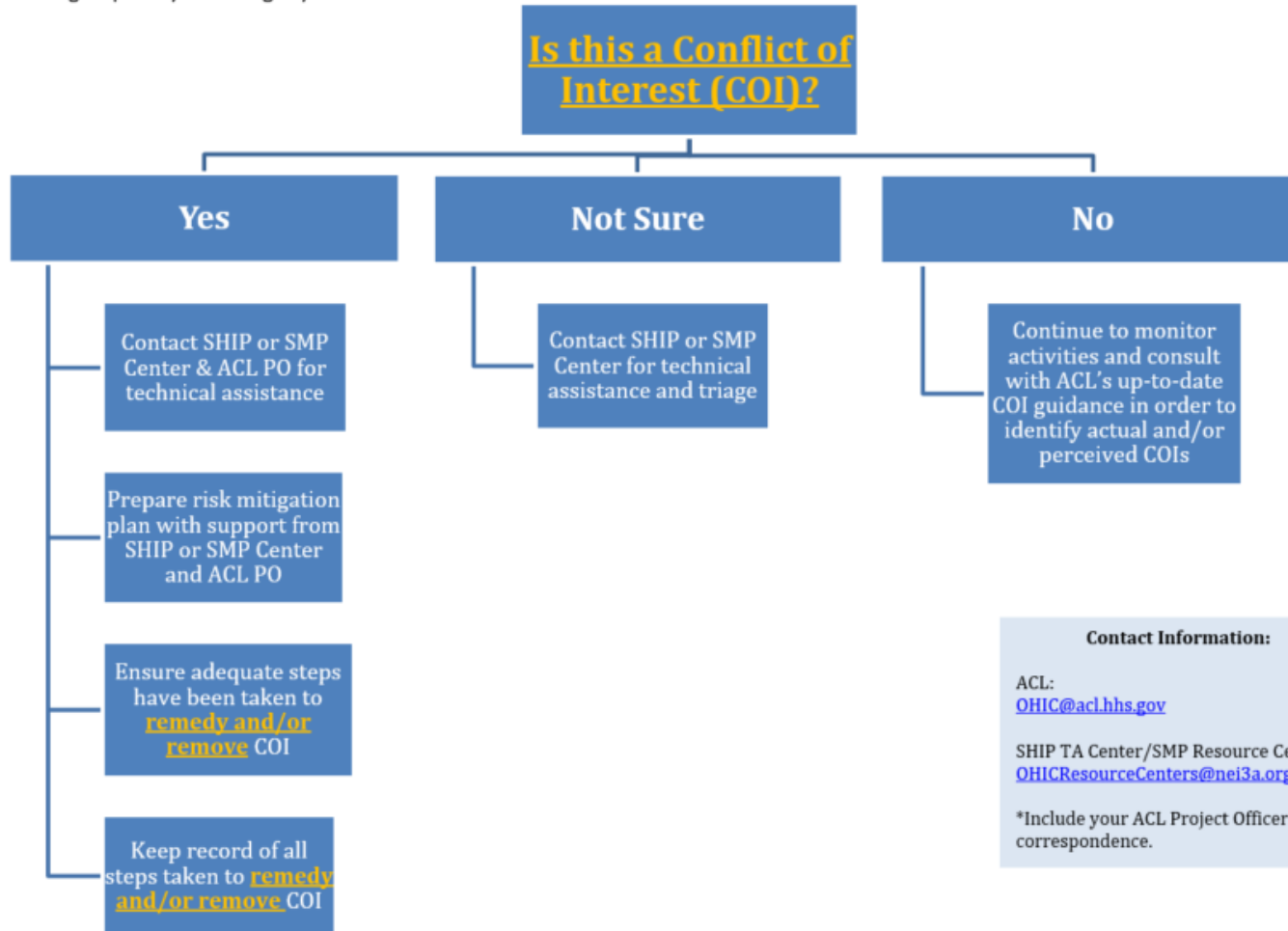
- (2) As part of an application for a grant under this section, a State shall submit a plan for a State-wide health insurance information, counseling, and assistance program. Such program shall—
- (A) establish or improve upon a health insurance information, counseling, and assistance program that provides counseling and assistance to eligible individuals in need of health insurance information, including—
 - (i) information that may assist individuals in obtaining benefits and filing claims under titles XVIII and XIX of the Social Security Act;
 - (ii) policy comparison information for medicare supplemental policies (as described in section 1882(g)(1) of the Social Security Act) and information that may assist individuals in filing claims under medicare supplemental policies;
 - (iii) information regarding long-term care insurance; and
 - (iv) information regarding other types of health insurance benefits that the Secretary determines to be appropriate;
 - (B) in conjunction with the health insurance information, counseling, and assistance program described in subparagraph (A), establish a system of referral to appropriate Federal or State departments or agencies for assistance with problems related to health insurance coverage (including legal problems), as determined by the Secretary;
 - (C) provide for a sufficient number of staff positions (including volunteer positions) necessary to provide the services of the health insurance information, counseling, and assistance program;
 - (D) provide assurances that staff members (including volunteer staff members) of the health insurance information, counseling, and assistance program have no conflict of interest in providing the counseling described in subparagraph (A);**
 - (E) provide for the collection and dissemination of timely and accurate health care information to staff members;
 - (F) provide for training programs for staff members (including volunteer staff members);
 - (G) provide for the coordination of the exchange of health insurance information between the staff of departments and agencies of the State government and the staff of the health insurance information, counseling, and assistance program;
 - (H) make recommendations concerning consumer issues and complaints related to the provision of health care to agencies and departments of the State government and the Federal Government responsible for providing or regulating health insurance;
 - (I) establish an outreach program to provide the health insurance information and counseling described in subparagraph (A) and the referrals described in subparagraph (B) to eligible individuals; and
 - (J) demonstrate to the satisfaction of the Secretary, an ability to provide the counseling and assistance required under this section

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Addendum D: COI Decision Tree

*This decision tree was prepared for use by ACL SHIP/SMP/MIPPA grantees. Though this document includes best practices that may be helpful for others, guidance for other groups may differ slightly.



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Volunteer Opportunity: COI Grantee TA Workgroup

- **Goal:** Support OHIC and the Centers by providing remedy/removal recommendations for challenging conflict of interest cases.
- **Composition:** 10-12 knowledgeable, engaged grantee stakeholders
- **Time Commitment:**
 - 12 month term
 - 2-4 hours per month unless additional need is identified

Volunteer Opportunity: VRPM Revamp Workgroup

- **Goal:** Support OHIC and the Centers by providing updated language recommendations for existing VRPM document
- **Composition:** 10-12 knowledgeable, engaged grantee stakeholders
- **Time Commitment:**
 - Approximately 6 months
 - 4 hours per month unless additional need is identified

Volunteer Opportunities

- Would you be willing to support ACL by serving on either advisory group?
 - **COI Grantee TA Workgroup**
 - **VRPM Revamp Workgroup**
- If so, complete the survey at this link (also sent in chat)
<https://www.surveymonkey.com/r/7FFF2MR>
- Information about workgroup participation will be available within the next few months.

Poll 3

- Given the information we've provided during today's presentation, do you think you have possible conflicting relationships/situations?

Don't worry, this poll is anonymous.

- Yes
- No
- I'm not sure

Questions?

ACL:

OHIC@acl.hhs.gov

SHIP TA Center/SMP Resource Center:

OHICResourceCenters@nei3a.org

*Include your ACL Project Officer when corresponding