



NOV 28 1997

Washington, D.C. 20201

Heather L. Adams
Assistant Attorney General
State of Iowa Department of Justice
Hoover Building
Des Moines, Iowa 50319

Dear Ms. Adams:

This is in response to guidance you requested from Mr. Larry Brewster, Regional Administrator, Administration on Aging, Region VII, concerning issues related to a potential conflict of interest involving the Office of the State Long-Term Care Ombudsman. Since these issues involve policy which could impact on ombudsman programs in other states, Mr. Brewster referred your letter to me for a response. I apologize for the delay in responding.

Your request indicated that a new Iowa law, Iowa Code chapter 231C, requires the Department of Elder Affairs to certify and monitor assisted living programs. The State Long Term Care Ombudsman is located within that Department.

You question whether this placement may conflict with two provisions of the Older Americans Act (OAA), at Sections 712(a)(4) and 712(f)(3)(A). Under Section 712(a)(4), a State may not operate the Long Term Care Ombudsman Office through a contract or other arrangement with an agency that is responsible for licensing or certifying long term care services in the State. Section 712(f)(3)(A) requires that a State must ensure that the Ombudsman does not have direct involvement in the licensing or certification of a long term care facility or of a provider of a long term care service.

In response, I must inform you that assisted living programs of the kind you describe are considered long-term care facilities under Section 102(34)(d) of the OAA. The conflict-of-interest provision at Section 712(f)(1) pertaining to the designation of the Ombudsman is also relevant to this situation.

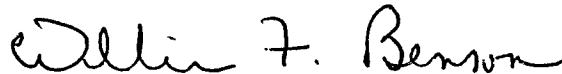
While these various provisions of the OAA do not, in and of themselves, preclude the placement of the Long Term Care Ombudsman within the Department of Elder Affairs, it is the position of the Administration on Aging that, in those situations where the State agency on aging has responsibilities for both directly administering the State Long Term Care Ombudsman Program and licensing and certification of long term care facilities, special care must be taken and great consideration given to

assure the protection of the Ombudsman Program on every point intended by Congress. Thus, if the Department of Elder Affairs continues to operate the Ombudsman Program, the Department must have policies which clearly and explicitly provide for the prevention of conflict-of-interest and which assure the independence of the program and its protection from conflicts and potential conflicts-of-interest.

Although the Department of Elder Affairs can, with adequate safeguards, continue to operate the Ombudsman Program, you should be advised that a number of states, when faced with the situation you describe in Iowa, have made the decision to have another entity administer the Ombudsman program. These states have thus resolved this difficult conflict of interest issue by completely separating the Ombudsman program from the State agency on aging. I am attaching a list of these states in case you wish to contact them for information about their program.

I hope this provides sufficient guidance to resolve the matter before you. If I can be of further assistance, please contact me at 202-401-4634, or call Brian Lutz (202-690-7525) or Sue Wheaton (202-619-7585) of our Elder Rights unit. Any of us would be pleased to discuss these issues with you in more detail.

Sincerely,



William F. Benson
Acting Principal Deputy
Assistant Secretary for Aging

Enclosure

cc: Betty L. Grandquist
Larry Brewster