



April 13, 2012

Joseph Rodrigues  
Office of the State Long-Term Care Ombudsman  
1300 National Drive, Suite 200  
Sacramento, California 95834-1995

Re: Compensation and Reimbursement to a State Long-Term Care Ombudsman Serving as a Patient Care Ombudsman under the Bankruptcy Code

Dear Mr. Rodrigues:

This letter is in response to your August 11, 2011, request for a determination from this Office regarding whether or not it is a conflict of interest as described in the Older Americans Act (OAA) for the State Long-Term Care Ombudsman and his or her representatives to receive compensation for services or reimbursement for expenses carried out under the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Code; 11 U.S.C. § 330(a)).

The Bankruptcy Code allows for the appointment of Patient Care Ombudsman when a health care business files for bankruptcy. If the health care business provides long-term care services, the Bankruptcy Court may appoint the State Long-Term Care Ombudsman as the Patient Care Ombudsman. The Bankruptcy Code permits compensation and reimbursement of actual services and expenses to be paid to the Patient Care Ombudsman.

The Administration on Aging has determined that compensation or reimbursement under the Bankruptcy Code to the Office of the State Long-Term Care Ombudsman, the State Ombudsman and Ombudsman representatives does not constitute a prohibited conflict of interest under the OAA. A court order for compensation for services to assist in the administration of the bankruptcy case under section 333 of the Bankruptcy Code does not constitute "a compensation arrangement with an owner or operator of a long-term care facility" which would be prohibited by the OAA. 42 U.S.C. § 3058g(f)(3)(D). Congress expressly provided for the appointment of the State Long-Term Care Ombudsman in these cases, as well as compensation for work done as a result of such appointment under the Bankruptcy Code. Moreover, even if court-ordered compensation could be considered to conflict with the OAA, the more specific Bankruptcy Code amendments would supersede any OAA provision to the contrary.

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I hope this information is helpful to you. Please let us know if you have any further questions regarding this matter.

Sincerely,  


Becky A. Kurtz

Director

Office of Long-Term Care Ombudsman Programs