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