

December 29, 2005

Mr. David S. Durbin  
Deputy Department Director  
Senior Services and Regulation  
Missouri Department of Health and Senior Services  
P.O. Box 570  
Jefferson City, MO 65102

Dear Mr. Durbin:

Missouri's proposed state plan amendment regarding organizational placement of the State Office of the Long-Term Care Ombudsman Program has been forwarded to this office by Larry Brewster, Regional Administrator, for review and response. The question raised by the proposed organization is: does the new organizational placement conform to requirements in the Older Americans Act designed to prevent conflicts-of-interest and perceived conflicts between the Ombudsman Program and the state's regulatory program for facilities covered by the Ombudsman Program?

Section 712(a)(4)(i) of the Older Americans Act prohibits the State Agency on Aging from entering into a contract or other arrangement with an agency or organization that is responsible for licensing or certifying long-term care services in the state to operate the Office of the State Long-Term Care Ombudsman. Section 712(f) (1) requires the State Agency to ensure that no individual involved in the designation of the Ombudsman or the designation of a local ombudsman entity is subject to a conflict of interest. Section 712(f) (3) requires the State Agency to ensure that the Ombudsman has no direct involvement in the licensing or certification of a long-term care facility. Taken together, these statutory provisions make it clear that it would be a conflict of interest for an agency which licenses, certifies or enforces requirements pertaining to institutional long-term care services to directly operate the Ombudsman Program. One state agency or office may not directly administer both the Ombudsman Program and the regulatory enforcement functions for facilities covered by the Ombudsman Program.

However, as you point out in your September 8, 2005 letter to Mr. Brewster, the Ombudsman Program is not located in the organizational unit which is directly responsible for licensing and certifying facilities. The State Ombudsman and the manager who is responsible for day-to-day decision-making and administration of long term care licensing and regulations are parallel positions within the Division of Regulations and Licensure. In this regard, the organizational structure is similar to that in other states where the Ombudsman Program and the regulatory agency are both within an umbrella agency or department but the State Ombudsman does not report to the person responsible for day-to-day administration of the facility regulatory program.

For these reasons, the proposed organizational arrangement in Missouri is acceptable. However, the fact that the Ombudsman Program is now shown on the Department of Health and Senior Services' organization chart as being within the Division of Regulation and Licensure is problematic. It depicts an organizational arrangement that will raise questions from consumers, providers and advocates, who expect that the Ombudsman Program is and will be independent of the regulatory agency. We recommend that you address this problem

by indicating on the organizational chart that the Ombudsman Program, in compliance with the Older Americans Act, operates apart from, and is independent of, the regulatory function. We request that you address this issue of perceived conflict of interest in the organizational chart and inform this office of the result.

Sincerely,

(S)

Francis A. Burns  
Director  
Office of Long-Term Care Ombudsman Programs

cc: Larry Brewster  
Carol Scott