

The Vermont Statutes Online

Title 33 : Human Services

Chapter 075 : State Long-term Care Ombudsman

(Cite as: 33 V.S.A. § 7509)

§ 7509. Conflict of Interest

(a) The Department of Disabilities, Aging, and Independent Living and the Ombudsman shall identify organizational conflicts of interest that may impact the effectiveness and credibility of the Ombudsman's office and shall remove or remedy any such conflicts. Organizational conflicts include placement of the Ombudsman's office, or requiring that the Ombudsman or a representative of the Office perform conflicting activities, in an organization that:

- (1) is responsible for licensing, surveying, or certifying long-term care facilities;
- (2) is an association or an affiliate of an association of long-term care facilities or of any other entity that provides long-term care through the Choices for Care program contained within Vermont's Global Commitment to Health Section 1115 demonstration;
- (3) has any ownership or investment interest in, or receives grants or donations from, a long-term care facility;
- (4) has any officer or governing board member with any ownership, investment, or employment interest in a long-term care facility or an entity that provides long-term care through the Choices for Care program contained within Vermont's Global Commitment to Health Section 1115 demonstration;
- (5) provides long-term care to residents;
- (6) provides long-term care coordination or case management for residents;
- (7) sets reimbursement rates for long-term care facilities;
- (8) provides adult protective services;
- (9) is responsible for eligibility determinations for patients regarding Medicaid or other public benefits;
- (10) conducts preadmission screening for long-term care facility placements;
- (11) makes decisions regarding admission or discharge of individuals to or from long-term care facilities; or
- (12) provides guardianship, conservatorship, or other fiduciary or surrogate decision-making services for residents.

(b) To avoid individual conflicts of interest that may impact the effectiveness and credibility of the work of the Ombudsman's office, the Ombudsman shall develop and implement policies and procedures to ensure that neither the Ombudsman nor representatives of the Office are required or permitted to hold positions or perform duties that would constitute an individual conflict of interest. Individual conflicts of interest for an Ombudsman, representatives of the Office, and members of their immediate families include:

- (1) direct involvement in the licensing or certification of a long-term care facility;
- (2) ownership, operational, or investment interest in an existing or proposed long-term care facility or other entity that provides long-term care through the Choices for Care program contained within Vermont's Global Commitment to Health Section 1115 demonstration;
- (3) an individual's employment by, or participation in the management of, a long-term care facility in this State or an individual's employment by the owner or operator of any long-term care facility in this State;
- (4) receipt of, or the right to receive, directly or indirectly, remuneration under a compensation arrangement with an owner or operator of a long-term care facility;
- (5) acceptance of gifts or gratuities of significant value from a long-term care facility or its management, or from a resident or resident representative of a long-term care facility in which the Ombudsman or a representative of the Office provides services, except if the individual has a personal relationship with a resident or resident representative separate from the individual's role as the Ombudsman or representative of the Office;
- (6) acceptance of money or any other consideration from anyone other than the Ombudsman's office, or an entity approved by the Ombudsman, for the performance of an act in the regular course of duties of the Ombudsman or of representatives of the Office, without the Ombudsman's approval;
- (7) serving as a guardian, conservator, or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in which the Ombudsman or a representative of the Office provides services; and
- (8) providing services to residents of a long-term care facility in which an immediate family member resides.

(c) The Ombudsman, consistent with the requirements of the Older Americans Act, shall be able to speak on behalf of the interest of individuals receiving long-term care and to carry out all duties prescribed in this chapter without being made subject to any disciplinary or retaliatory personnel or other action as a consequence of so doing. The Commissioner of Disabilities, Aging, and Independent Living shall establish a committee of no fewer than five persons, who represent the interests of individuals receiving long-term care and who are not State employees, for the purpose of ensuring that the Ombudsman program is free from conflicts of interest. The Commissioner shall solicit from this committee its assessment of the Ombudsman program's capacity to operate in accordance with this subsection and shall submit

that assessment as an appendix to the report required under subdivision 7503(10) of this title. The Department, in consultation with this committee, shall establish a process for periodic review and identification of conflicts within the Ombudsman program. (Added 1989, No. 251 (Adj. Sess.), § 1; amended 2005, No. 56, § 3, eff. June 13, 2005; 2017, No. 23, § 1.)