

# GOV. MSG. NO **85**/

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE GOVERNOR

May 24, 2007

The Honorable Colleen Hanabusa, President and Members of the Senate Twenty-Fourth State Legislature State Capitol, Room 409 Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 24, 2007, the following bill was signed into law:

HB807 HD1 SD2 CD1

A BILL FOR AN ACT RELATING TO CAREGIVING. (ACT 093)

Sincerely,

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LINDA LINGLE

Approved by the Governor on <u>MAY 2 4 2007</u>

HOUSE OF REPRESENTATIVES TWENTY-FOURTH LEGISLATURE, 2007 STATE OF HAWAII

### ACT 093 H.B. NO. <sup>807</sup> H.D. 1 S.D. 2 C.D. 1

### A BILL FOR AN ACT

RELATING TO CAREGIVING.

#### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The executive office on aging's long-term care 2 ombudsman program is mandated by the United States 3 Administration on Aging through the Older Americans Act. The 4 state long-term care ombudsman currently advocates for and 5 protects the rights of residents of nursing homes, adult residential care homes, assisted living facilities, and other 6 7 long-term care facilities. However, there is no statutory provision for the establishment of an office of the long-term 8 9 care ombudsman.

10 The long-term care ombudsman investigates and resolves 11 problems or complaints about the caregiving or services provided 12 in long-term care facilities. The long-term care ombudsman also works with long-term care facilities, community organizations, 13 14 residents, family councils, and other interested parties to 15 improve the quality of caregiving and quality of life of longterm care residents. In addition, the long-term care ombudsman 16 provides information, referrals, and consultations to families, 17

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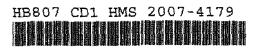
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1	service providers, and the general public on long-term
2	caregiving issues. The program is staffed by the long-term care
3	ombudsman, one long-term care ombudsman specialist, and one
4	volunteer coordinator. The long-term care ombudsman program
5	serves over eight thousand residents in approximately seven
6	hundred thirty-one licensed facilities statewide.
7	The purpose of this Act is to formally establish an office
8	of the long-term care ombudsman within the executive office on
9	aging.
10	SECTION 2. Chapter 349, Hawaii Revised Statutes, is
11	amended by adding two new sections to part II to be
12	appropriately designated and to read as follows:
13	"§349- Wilful interference; prohibited. Any individual,
14	including any long-term care facility or long-term care facility
15	employee, who wilfully interferes with or impedes the long-term
16	care ombudsman or designee in the performance of the long-term
17	care ombudsman's or designee's duties pursuant to this part
10	
18	shall be guilty of a misdemeanor. Each separate act of wilful
18 19	shall be guilty of a misdemeanor. Each separate act of wilful interference and each day during which any wilful interference
19	interference and each day during which any wilful interference



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1	facility with brochures and a poster with information regarding
2	the office of the long-term care ombudsman, including the name,
3	address, and telephone number of the office of the long-term
4	care ombudsman, and a brief description of the services provided
5	by the office of the long-term care ombudsman.
6	(b) A long-term care facility shall provide each resident
7	of the long-term facility with a copy of the brochure and shall
8	post the poster in a conspicuous location that is accessible to
9	all residents of the long-term care facility."
10	SECTION 3. Chapter 349, Hawaii Revised Statutes, is
11	amended by designating sections 349-1 to 349-11, Hawaii Revised
12	Statutes, as part I and adding a title before section 349-1,
13	Hawaii Revised Statutes, to read as follows:
14	"PART I. GENERAL PROVISIONS"
15	SECTION 4. Chapter 349, Hawaii Revised Statutes, is
16	amended by designating sections 349-12 to 349-14, Hawaii Revised
17	Statutes, as part II and adding a title before section 349-12,
18	Hawaii Revised Statutes, to read as follows:
19	"PART II. OFFICE OF THE LONG-TERM CARE OMBUDSMAN"
20	SECTION 5. Section 349-12, Hawaii Revised Statutes, is
21	amended to read as follows:

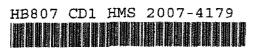


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1	"§349-12 [ <del>Long-term-care-facilities. (a) For-purposes of</del>
2	this chapter, the term "long term care facilities" means any
3	skilled nursing facility as defined in section 1861(j) of the
4	Social Security Act, as amended, any intermediate care facility
5	as defined in section 1905(c) of the Social Security Act, as
6	amended, any nursing home as defined in section 1908(c) of the
7	Social Security Act, as amended, and any other similar adult
8	eare-facility-licensed by the State serving elders.
9	(b) The executive office on aging shall have the
10	responsibility to represent] Office of the long-term care
11	ombudsman. (a) There is established the office of the
12	long-term care ombudsman in the executive office on aging to
13	protect the health, safety, welfare, and rights of residents of
14	long-term care facilities in accordance with state and federal
15	law. The office of the long-term care ombudsman shall be headed
16	by the long-term care ombudsman.
17	(b) The long-term care ombudsman shall:
18	(1) Be hired pursuant to chapter 76;
19	(2) Be free of conflict of interest;
20	(3) Have expertise and experience in the fields of
21	long-term care and advocacy;
22	(4) Serve on a full-time basis; and



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1	(5)	Prepare an annual report in accordance with the
2		federal Older Americans Act, as amended.
3	<u>(c)</u>	The long-term care ombudsman, personally or through a
4	<u>designee,</u>	shall:
5	(1)	Represent the interests of residents of long-term care
6		facilities, individually and as a class, [and] to
7		[promote]:
8		(A) Protect their health, safety, welfare, and
9		rights; and
10		(B) Promote improvement in the quality of care
11		[ <del>received</del> ] they receive and [the] their quality
12		of life [ <del>experienced by residents of long term</del>
13		care facilities within the State. In meeting
14		this responsibility, the executive office on
15		<del>aging shall:</del>
16	<del>(1)</del>	Perform its duties and functions either directly or by
17		other arrangement executed by the director with any
18		public or private nonprofit organization, except with
19		any organization responsible for licensing or
20		certifying long term care facilities in the State or
21		which is engaged in offering long term care services

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1		or which is an association (or an affiliate of such an
2		association) of long-term-care-facilities];
3	(2)	[Investigate] Identify, investigate, and resolve
4		complaints, including complaints against providers of
5		long-term care services and their representatives,
6		made by or on behalf of residents of long-term care
7		facilities relating to [acts which] actions, inactions
8		or decisions that may adversely affect the health,
9		safety, welfare, $[and]$ or rights of residents $[+]$ of
10		long-term care facilities, including the appointment
11		and activities of guardians and representative payees;
12	(3)	Monitor and comment on the development and
13		implementation of federal, state, and local laws,
14		regulations, [and] policies [affecting], and actions
15		that pertain to the health, safety, welfare, or rights
16		of residents of long-term care facilities, including
17		the adequacy of long-term care facilities and services
18		in the [ <del>State</del> ] state, and recommend changes as
19		necessary;
20	(4)	Provide information as appropriate to public agencies
21		regarding the problems of [ <del>older persons residing in</del> ]
22		residents of long-term care facilities;



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1	(5)	Train volunteers [ <del>or</del> ] <u>and</u> employees [ <del>to serve</del>
2		institutionalized elders and to promote];
3	(6)	Promote the development of citizen organizations to
4		participate in the advocacy program;
5	[ <del>-(6)</del> ]	(7) Establish procedures for appropriate access by
6		the [executive office on aging] long-term care
7		ombudsman to long-term care facilities[+] and to
8		residents of long-term care facilities;
9	[ <del>-(7)</del> ]	(8) Establish procedures for appropriate access by
10		the [ <del>executive office on aging</del> ] <u>long-term care</u>
11		ombudsman to all [patient] resident records or
12		portions thereof necessary for the [executive office
13		on aging] long-term care ombudsman to evaluate the
14		merits of a specific complaint or complaints; provided
15		that [patient] resident records shall be divulged only
16		with the written consent of the [patient] resident or
17		the [ <del>patient's</del> ] resident's legal representative;
18	[ <del>-(8)</del> ]	(9) Establish procedures for appropriate access to
19		files maintained by the [executive office on aging,]
20		long-term care ombudsman, except that the identity of
21		any complainant or resident of a long-term care
22		facility shall not be disclosed unless:

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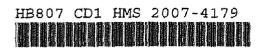


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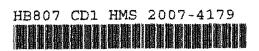
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1		(A)	[ <del>Such</del> ] <u>The</u> complainant or resident, or the
2			complainant's or resident's legal representative,
3			consents in writing to [ <del>such</del> ] <u>the</u> disclosure;
4			[ <del>or</del> ]
5		(B)	[Such] The complainant or resident consents
6			orally and the consent is documented
7			contemporaneously in writing by the long-term
8			care ombudsman or designee; or
9		<u>(C)</u>	The disclosure is required by court order $[-]_{\underline{i}}$
10	(10)	Prov	ide technical support for the development of
11		resi	dent and family councils to help protect the
		1	the setection welfame and wights of wesidents of
12		near	th, safety, welfare, and rights of residents of
12 13			-term care facilities;
	(11)	long	
13	(11)	long Prov	-term care facilities;
13 14	(11)	long Prov	-term care facilities; ide residents of long-term care facilities with:
13 14 15	(11)	long Prov	-term care facilities; ide residents of long-term care facilities with: Information regarding how to obtain necessary
13 14 15 16	(11)	long Prov (A)	<pre>-term care facilities; ide residents of long-term care facilities with: Information regarding how to obtain necessary services;</pre>
13 14 15 16 17	(11)	long Prov (A)	<pre>-term care facilities; ide residents of long-term care facilities with: Information regarding how to obtain necessary services; Regular access to the office of the long-term</pre>
13 14 15 16 17 18	(11)	long Prov (A)	<pre>-term care facilities; ide residents of long-term care facilities with: Information regarding how to obtain necessary services; Regular access to the office of the long-term care ombudsman at times deemed reasonable and</pre>
13 14 15 16 17 18 19		<u>long</u> <u>Prov</u> (A) (B)	<pre>-term care facilities; ide residents of long-term care facilities with: Information regarding how to obtain necessary services; Regular access to the office of the long-term care ombudsman at times deemed reasonable and necessary by the long-term care ombudsman; and</pre>



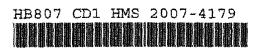
1	(13)	Carry out all other responsibilities as provided by
2		state or federal law.
3	(d)	The long-term care ombudsman shall establish
4	procedure	s to ensure that all designees, employees, and
5	volunteer	s are free of conflict of interest.
6	<u>(e)</u>	The long-term care ombudsman shall adopt rules
7	pursuant	to chapter 91 for the purposes of administering and
8	implement	ing this part.
9	<u>(£)</u>	For the purposes of this part:
10	<u>"Con</u>	flict of interest" includes:
11	(1)	Any direct involvement in the licensing or
12		certification of a long-term care facility or of a
13		provider of a long-term care service;
14	(2)	An ownership or investment interest in a long-term
15		care facility or a long-term care service;
16	(3)	Employment by, or participation in the management of,
17		a long-term care facility; and
18	(4)	Receipt of, or the right to receive, directly or
19		indirectly, remuneration under a compensation
20		arrangement with an owner or operator of a long-term
21		care facility.

22 "Long-term care facility" means any:



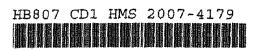
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1	(1)	Skilled nursing facility as defined in section 1819(a)
2		of the Social Security Act, as amended;
3	(2)	Nursing facility, as defined in section 1919(a) of the
4		Social Security Act, as amended;
5	(3)	Adult residential care home, including any expanded
6		adult residential care home;
7	(4)	Assisted living facility;
8	(5)	Intermediate care facility as defined in section
9		1905(c) of the Social Security Act, as amended; and
10	(6)	Other similar facility licensed by the State serving
11		<u>elders.</u> "
12	SECT	ION 6. Section 349-13, Hawaii Revised Statutes, is
13	amended to	o read as follows:
14	" [+] (	§349-13[] Access to long-term care facilities. (a)
15	[Any] A lo	ong-term care facility [ <del>which-receives-public-funds</del> ]
16	shall per	mit immediate access to the long-term facility and to
17	the reside	ents of the long-term care facility to the [executive
18	<del>office on</del>	aging in] long-term care ombudsman or designee at any
19	time deeme	ed necessary and reasonable by the long-term care
20	ombudsman	for the performance of [its] the duties and functions
21	under this	s [ <del>chapter.</del> ] <u>part.</u>



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1	(b) Access to the residents of the long-term care facility
2	shall include the provision of privacy.
3	(c) A long-term care facility shall permit access by the
4	long-term care ombudsman or designee to all resident records or
5	portions thereof necessary for the long-term care ombudsman to
6	evaluate the merits of any complaint; provided that resident
7	records shall be divulged only with the written consent of the
8	resident or the resident's legal representative.
9	(d) The long-term care ombudsman shall report violations
10	of this section to the department of health.
11	(e) The department of health shall adopt rules, including
12	the establishment of administrative fines or other penalties,
13	pursuant to chapter 91 for the violation of this section."
14	SECTION 7. Section 349-14, Hawaii Revised Statutes, is
15	amended to read as follows:
16	"§349-14 Retaliatory acts by facilities or facility
17	employees prohibited. (a) No resident of a long-term care
18	facility seeking advocacy assistance as provided for in section
19	349-12 or making a complaint concerning a long-term care
20	facility or any of its employees shall be subject to any
21	retaliatory act by the <u>long-term care</u> facility or any of its





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1	employees for seeking advocacy assistance or making a
2	complaint [ <del>; provided that for</del> ].
3	(b) No person seeking advocacy assistance as provided for
4	in section 349-12 or making a complaint concerning a long-term
5	care facility or any of its employees on behalf of a resident of
6	a long-term care facility shall be subject to any retaliatory
7	act by the long-term care facility or any of its employees for
8	seeking advocacy assistance or making a complaint.
9	(c) For the purposes of this [chapter,] section, the term
10	"retaliatory act" [shall_include, but not be limited to,]
11	includes actual or threatened physical injury, psychological
12	abuse or neglect, sexual abuse, negligent treatment,
13	maltreatment, or any form of discrimination as reprisal for
14	seeking advocacy assistance or making a complaint.
15	(d) A violation of this section shall be reported by the
16	[executive office on aging] the long-term care ombudsman to the
17	appropriate police department or prosecuting attorney.
18	[ <del>(b)</del> ] <u>(e)</u> Any <u>long-term care</u> facility or <u>long-term care</u>
19	facility employee who violates [the provisions of] this section
20	shall be guilty of a misdemeanor. Each separate retaliatory act
21	and each day during which any retaliatory act continues shall
22	constitute a separate offense."
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1	SECTION 8. Chapter 349, Hawaii Revised Statutes, is
2	amended by designating section 349-15, Hawaii Revised Statutes,
3	as part III and adding a title before section 349-15, Hawaii
4	Revised Statutes, to read as follows:
5	"PART III. CAREGIVER SUPPORT SERVICES"
6	SECTION 9. This Act does not affect rights and duties that
7	matured, penalties that were incurred, and proceedings that were
8	begun, before its effective date.
9	SECTION 10. Statutory material to be repealed is bracketed
10	and stricken. New statutory material is underscored.
11	SECTION 11. This Act shall take effect upon its approval;
12	provided that section 2 shall take effect on January 1, 2008.

APPROVED this 24 day of MAY , 2007

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GOVERNOR OF THE STATE OF HAWAII

