

JAN 19 2007

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# A BILL FOR AN ACT

RELATING TO LONG-TERM CARE.

**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  
6 residential care homes, assisted living facilities, and other  
7 long-term care facilities. However, there is no statutory  
8 provision for the establishment of an office of the long-term  
9 care ombudsman.

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



1 referrals, and consultations to families, service providers, and  
2 the general public on long-term care issues.

3       The program is staffed by the long-term care ombudsman, one  
4 long-term care ombudsman specialist, and one volunteer  
5 coordinator. The long-term care ombudsman program serves over  
6 eight thousand residents in approximately seven hundred thirty-  
7 one licensed facilities statewide. The long-term care ombudsman  
8 program needs to hire regional program specialists to better  
9 provide for residents of long term care facilities on the  
10 neighbor islands. Regional program specialists are more cost  
11 effective and beneficial to residents. Currently, the staff  
12 must fly to the neighbor islands to assist residents there,  
13 incurring travel expenses and often putting in uncompensated  
14 time on the neighbor islands. Among other things, regional  
15 program specialists could respond to complaints quicker, could  
16 recruit local volunteers, are more visible, and know the local  
17 people.

18       The purpose of this Act is to formally establish an office  
19 of the long-term care ombudsman within the executive office on  
20 aging and to appropriate funds to establish an additional three  
21 ombudsman program specialist IV positions and a clerk typist II



1 position, to support a regional long-term care ombudsman program  
2 on the neighbor islands.

3 SECTION 2. Chapter 349, Hawaii Revised Statutes, is  
4 amended by designating sections 349-1 to 349-11, Hawaii Revised  
5 Statutes, as part I and adding a title before section 349-1,  
6 Hawaii Revised Statutes, to read as follows:

7 "PART I. GENERAL PROVISIONS"

8 SECTION 3. Chapter 349, Hawaii Revised Statutes, is  
9 amended by designating sections 349-12 to 349-14, Hawaii Revised  
10 Statutes, as part II and adding a title before section 349-12,  
11 Hawaii Revised Statutes, to read as follows:

12 "PART II. OFFICE OF THE LONG-TERM CARE OMBUDSMAN"

13 SECTION 4. Section 349-12, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 ~~"§349-12 [Long term care facilities. (a) For purposes of~~  
16 ~~this chapter, the term "long term care facilities" means any~~  
17 ~~skilled nursing facility as defined in section 1861(j) of the~~  
18 ~~Social Security Act, as amended, any intermediate care facility~~  
19 ~~as defined in section 1905(e) of the Social Security Act, as~~  
20 ~~amended, any nursing home as defined in section 1908(e) of the~~  
21 ~~Social Security Act, as amended, and any other similar adult~~  
22 ~~care facility licensed by the State serving elders.~~



1       ~~(b) The executive office on aging shall have the~~  
2       ~~responsibility to represent] Office of the long-term care~~  
3       ombudsman. (a) There is established the office of the  
4       long-term care ombudsman in the executive office on aging to  
5       protect the human and civil rights of long-term care residents  
6       in accordance with state and federal law. The office of the  
7       long-term care ombudsman shall be headed by the long-term care  
8       ombudsman.

9       (b) The long-term care ombudsman shall:

- 10       (1) Be hired pursuant to chapter 76;
- 11       (2) Have expertise and experience in the fields of  
12       long-term care and advocacy; and
- 13       (3) Prepare an annual report.

14       (c) The long-term care ombudsman shall also, personally or  
15       through a designee:

- 16       (1) Represent the interests of residents of long-term care  
17       facilities, individually and as a class, and ~~[to]~~  
18       promote improvement in the quality of care received  
19       and the quality of life experienced by residents of  
20       long-term care facilities within the State [~~—~~In  
21       ~~meeting this responsibility, the executive office on~~  
22       ~~aging shall:~~



- 1       ~~(1) Perform its duties and functions either directly or by~~  
2       ~~other arrangement executed by the director with any~~  
3       ~~public or private nonprofit organization, except with~~  
4       ~~any organization responsible for licensing or~~  
5       ~~certifying long term care facilities in the State or~~  
6       ~~which is engaged in offering long term care services~~  
7       ~~or which is an association (or an affiliate of such an~~  
8       ~~association) of long term care facilities];~~
- 9       (2) Investigate and resolve complaints made by or on  
10       behalf of residents of long-term care facilities  
11       relating to acts [~~which~~] that may adversely affect the  
12       health, safety, welfare, [~~and~~] or rights of  
13       residents[+] of long-term care facilities;
- 14       (3) Monitor the development and implementation of federal,  
15       state, and local laws, regulations, and policies  
16       affecting long-term care facilities in the State;
- 17       (4) Provide information as appropriate to public agencies  
18       regarding the problems of older persons residing in  
19       long-term care facilities;
- 20       (5) Train volunteers or employees to serve  
21       institutionalized elders and to promote the



1 development of citizen organizations to participate in  
2 the advocacy program;

3 (6) Establish procedures for appropriate access by the  
4 ~~[executive office on aging]~~ long-term care ombudsman  
5 to long-term care facilities~~[,]~~ and to residents of  
6 long-term care facilities;

7 (7) Establish procedures for appropriate access by the  
8 ~~[executive office on aging]~~ long-term care ombudsman  
9 to all patient records or portions thereof necessary  
10 for the ~~[executive office on aging]~~ long-term care  
11 ombudsman to evaluate the merits of a specific  
12 complaint or complaints; provided that patient records  
13 shall be divulged only with the written consent of the  
14 patient or the patient's legal representative;

15 (8) Establish procedures for appropriate access to files  
16 maintained by the ~~[executive office on aging,]~~  
17 long-term care ombudsman, except that the identity of  
18 any complainant or resident of a long-term care  
19 facility shall not be disclosed unless:

20 (A) ~~[Such]~~ The complainant or resident, or the  
21 complainant's or resident's legal representative,  
22 consents in writing to ~~[such]~~ the disclosure; or



1 (B) [~~Such~~] The disclosure is required by court  
2 order[-]; and

3 (9) Carry out any other activities as provided by state or  
4 federal law.

5 (d) For the purposes of this part, the term "long-term  
6 care facility" means any skilled nursing facility as defined in  
7 section 1861(j) of the Social Security Act, as amended, any  
8 intermediate care facility as defined in section 1905(c) of the  
9 Social Security Act, as amended, any nursing home as defined in  
10 section 1908(e) of the Social Security Act, as amended, and any  
11 other similar adult care facility licensed by the State serving  
12 elders."

13 SECTION 5. Section 349-13, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[~~+~~]§349-13[~~+~~] **Access to long-term care facilities.** (a)  
16 Any long-term care facility [~~which~~] that receives public funds  
17 shall permit access to the long-term facility and to the  
18 residents of the long-term care facility to the [executive  
19 office on aging in] long-term care ombudsman or designee at any  
20 time deemed necessary and reasonable by the long-term care  
21 ombudsman for the performance of [its] the duties and functions  
22 under this [chapter-] part.

1        (b) Access to the residents of the long-term care facility  
2 shall include the provision of privacy."

3        SECTION 6. Section 349-14, Hawaii Revised Statutes, is  
4 amended to read as follows:

5        "**§349-14 Retaliatory acts by facilities or facility**  
6 **employees prohibited.** (a) No resident of a long-term care  
7 facility seeking advocacy assistance as provided for in section  
8 349-12 or making a complaint concerning a long-term care  
9 facility or any of its employees shall be subject to any  
10 retaliatory act by the long-term care facility or any of its  
11 employees for seeking advocacy assistance or making a  
12 complaint [~~7 provided that for~~].

13        (b) No person seeking advocacy assistance as provided for  
14 in section 349-12 or making a complaint concerning a long-term  
15 care facility or any of its employees on behalf of a resident of  
16 a long-term care facility shall be subject to any retaliatory  
17 act by the long-term care facility or any of its employees for  
18 seeking advocacy assistance or making a complaint.

19        (c) For the purposes of this [~~chapter~~] section, the term  
20 "retaliatory act" shall include [~~7 but not be limited to~~] actual  
21 or threatened physical injury, psychological abuse or neglect,  
22 sexual abuse, negligent treatment, maltreatment, or any form of





1 discrimination as reprisal for seeking advocacy assistance or  
2 making a complaint. A violation of this section shall be  
3 reported by the [~~executive office on aging~~] the long term care  
4 ombudsman to the appropriate police department or prosecuting  
5 attorney.

6       [~~(b)~~] (d) Any long-term care facility or long-term care  
7 facility employee who violates [~~the provisions of~~] this section  
8 shall be guilty of a misdemeanor. Each separate retaliatory act  
9 and each day during which any retaliatory act continues shall  
10 constitute a separate offense."

11       SECTION 7. Chapter 349, Hawaii Revised Statutes, is  
12 amended by designating section 349-15, Hawaii Revised Statutes,  
13 as part III and adding a title before section 349-15, Hawaii  
14 Revised Statutes, to read as follows:

15                   "PART III. CAREGIVER SUPPORT SERVICES"

16       SECTION 8. There is appropriated out of the general  
17 revenues of the State of Hawaii the sum of \$341,980, or so much  
18 thereof as may be necessary for fiscal year 2007-2008, and the  
19 same sum, or so much thereof as may be necessary for fiscal year  
20 2008-2009, for three permanent program specialist IV positions  
21 and one permanent clerk typist II, for the operation and



# S.B. NO. 1190

1 delivery of a regional long-term care ombudsman program on the  
2 neighbor islands.

3 SECTION 9. The sums appropriated shall be expended by the  
4 department of health for the purposes of this Act.

5 SECTION 10. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 11. This Act shall take effect upon its approval;  
8 provided that sections 8 and 9 shall take effect on July 1,  
9 2007.

10

INTRODUCED BY: Shianne Chun Oakland  
Yue Chow JT  
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**Report Title:**

Appropriation; Office of the Long-Term Care Ombudsman

**Description:**

Establishes an office of the long-term care ombudsman within the executive office on aging and appropriates funds for the office to hire additional staff and to support the office's operating costs to ensure adequate services on the neighbor islands.

