

JAN 17 2008

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# A BILL FOR AN ACT

RELATING TO LONG-TERM CARE OMBUDSMAN.

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

1           SECTION 1. Act 93, Session Laws of Hawaii 2007,  
2 established the office of the long-term care ombudsman within  
3 the executive office on aging.

4           The purpose of this Act is to establish and fund three  
5 additional local long-term care ombudsmen positions, one for the  
6 county of Maui, one for the county of Hawaii, and one for the  
7 county of Kauai, within the office of the long-term care  
8 ombudsman to work under the supervision of the long-term care  
9 ombudsman in achieving the goals of the program as mandated by  
10 the United States Administration on Aging through the Older  
11 Americans Act.

12           SECTION 2. Section 349-21, Hawaii Revised Statutes, is  
13 amended to read as follows:

14           "~~§~~349-21~~§~~ **Office of the long-term care ombudsman.**

15 (a) There is established the office of the long-term care  
16 ombudsman in the executive office on aging to protect the  
17 health, safety, welfare, and rights of residents of long-term



1 care facilities in accordance with state and federal law. The  
2 office of the long-term care ombudsman shall be headed by the  
3 long-term care ombudsman with the assistance of three local  
4 long-term care ombudsmen, one situated in the county of Hawaii,  
5 one situated in the county of Kauai, and one situated in the  
6 county of Maui.

7 (b) The long-term care ombudsman and each local ombudsman  
8 shall:

9 (1) Be hired pursuant to chapter 76;

10 (2) Be free of conflict of interest;

11 (3) Have expertise and experience in the fields of  
12 long-term care and advocacy;

13 (4) Serve on a full-time basis; and

14 (5) Prepare an annual report in accordance with the  
15 federal Older Americans Act, as amended.

16 (c) The long-term care ombudsman<sup>[7]</sup> and each local  
17 ombudsman, personally or through a designee, shall:

18 (1) Represent the interests of residents of long-term care  
19 facilities, individually and as a class, to:

20 (A) Protect their health, safety, welfare, and  
21 rights; and



- 1 (B) Promote improvement in the quality of care they  
2 receive and their quality of life;
- 3 (2) Identify, investigate, and resolve complaints,  
4 including complaints against providers of long-term  
5 care services and their representatives, made by or on  
6 behalf of residents of long-term care facilities  
7 relating to actions, inactions or decisions that may  
8 adversely affect the health, safety, welfare, or  
9 rights of residents of long-term care facilities,  
10 including the appointment and activities of guardians  
11 and representative payees;
- 12 (3) Monitor and comment on the development and  
13 implementation of federal, state, and local laws,  
14 regulations, policies, and actions that pertain to the  
15 health, safety, welfare, or rights of residents of  
16 long-term care facilities, including the adequacy of  
17 long-term care facilities and services in the State,  
18 and recommend changes as necessary;
- 19 (4) Provide information as appropriate to public agencies  
20 regarding the problems of residents of long-term care  
21 facilities;
- 22 (5) Train volunteers and employees;



- 1 (6) Promote the development of citizen organizations to  
2 participate in the advocacy program;
- 3 (7) Establish procedures for appropriate access by the  
4 long-term care ombudsman to long-term care facilities  
5 and to residents of long-term care facilities;
- 6 (8) Establish procedures for appropriate access by the  
7 long-term care ombudsman to all resident records or  
8 portions thereof necessary for the long-term care  
9 ombudsman to evaluate the merits of a specific  
10 complaint or complaints; [~~provided that resident~~  
11 ~~records shall be divulged only with the written~~  
12 ~~consent of the resident or the resident's legal~~  
13 ~~representative,]~~
- 14 (9) Establish procedures for appropriate access to files  
15 maintained by the long-term care ombudsman, except  
16 that the identity of any complainant or resident of a  
17 long-term care facility shall not be disclosed unless:
- 18 (A) The complainant or resident, or the complainant's  
19 or resident's legal representative, consents in  
20 writing to the disclosure;
- 21 (B) The complainant or resident consents orally and  
22 the consent is documented contemporaneously in



- 1 writing by the long-term care ombudsman or  
2 designee; or
- 3 (C) The disclosure is required by court order;
- 4 (10) Provide technical support for the development of  
5 resident and family councils to help protect the  
6 health, safety, welfare, and rights of residents of  
7 long-term care facilities;
- 8 (11) Provide residents of long-term care facilities with:
- 9 (A) Information regarding how to obtain necessary  
10 services;
- 11 (B) Regular access to the office of the long-term  
12 care ombudsman at times deemed reasonable and  
13 necessary by the long-term care ombudsman; and
- 14 (C) Regular and timely responses to their complaints;
- 15 (12) Seek administrative, legal, or other remedies to carry  
16 out this part; and
- 17 (13) Carry out all other responsibilities as provided by  
18 state or federal law.
- 19 (d) The long-term care ombudsman shall establish  
20 procedures to ensure that all designees, employees, and  
21 volunteers are free of conflict of interest.



1           (e) The long-term care ombudsman shall adopt rules  
2 pursuant to chapter 91 for the purposes of administering and  
3 implementing this part.

4           (f) For the purposes of this part:

5           "Conflict of interest" includes:

6           (1) Any direct involvement in the licensing or  
7 certification of a long-term care facility or of a  
8 provider of a long-term care service;

9           (2) An ownership or investment interest in a long-term  
10 care facility or a long-term care service;

11           (3) Employment by, or participation in the management of,  
12 a long-term care facility; and

13           (4) Receipt of, or the right to receive, directly or  
14 indirectly, remuneration under a compensation  
15 arrangement with an owner or operator of a long-term  
16 care facility.

17           "Long-term care facility" means any:

18           (1) Skilled nursing facility as defined in section 1819(a)  
19 of the Social Security Act, as amended;

20           (2) Nursing facility, as defined in section 1919(a) of the  
21 Social Security Act, as amended;



- 1 (3) Adult residential care home, including any expanded
- 2 adult residential care home;
- 3 (4) Assisted living facility;
- 4 (5) Intermediate care facility as defined in section
- 5 1905(c) of the Social Security Act, as amended; and
- 6 (6) Other similar facility licensed or certified by the
- 7 State serving elders."

8 SECTION 3. There is appropriated out of the general  
 9 revenues of the State of Hawaii the sum of \$ or so  
 10 much thereof as may be necessary for fiscal year 2008-2009 for  
 11 three local long-term care ombudsmen positions in the office of  
 12 the long-term care ombudsman within the executive office on  
 13 aging.

14 The sum appropriated shall be expended by the department of  
 15 health for the purposes of this Act.

16 SECTION 4. Statutory material to be repealed is bracketed  
 17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect on July 1, 2008.

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INTRODUCED BY: Shiranne Chun Oakland  
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**Report Title:**

Long-Term Care; Ombudsman

**Description:**

Expands the long-term care ombudsman program by adding three additional ombudsman positions, one for each neighboring county.

