

A Bill for an Act Relating to Caregiving.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

The long-term care ombudsman investigates and resolves problems or complaints about the caregiving or services provided in long-term care facilities. The long-term care ombudsman also works with long-term care facilities, community organizations, residents, family councils, and other interested parties to improve the quality of caregiving and quality of life of long-term care residents. In addition, the long-term care ombudsman provides information, referrals, and consultations to families, service providers, and the general public on long-term caregiving issues. The program is staffed by the long-term care ombudsman, one long-term care ombudsman specialist, and one volunteer coordinator. The long-term care ombudsman program serves over eight thousand residents in approximately seven hundred thirty-one licensed facilities statewide.

The purpose of this Act is to formally establish an office of the long-term care ombudsman within the executive office on aging.

SECTION 2. Chapter 349, Hawaii Revised Statutes, is amended by adding two new sections to part II to be appropriately designated and to read as follows:

**“§349- Wilful interference; prohibited.** Any individual, including any long-term care facility or long-term care facility employee, who wilfully interferes with or impedes the long-term care ombudsman or designee in the performance of the long-term care ombudsman's or designee's duties pursuant to this part shall be guilty of a misdemeanor. Each separate act of wilful interference and each day during which any wilful interference continues shall constitute a separate offense.

**§349- Posting and distribution of information.** (a) The long-term care ombudsman shall provide each long-term care facility with brochures and a poster with information regarding the office of the long-term care ombudsman, including the name, address, and telephone number of the office of the long-term care ombudsman, and a brief description of the services provided by the office of the long-term care ombudsman.

(b) A long-term care facility shall provide each resident of the long-term facility with a copy of the brochure and shall post the poster in a conspicuous location that is accessible to all residents of the long-term care facility.”

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

**“PART I. GENERAL PROVISIONS”**

SECTION 4. Chapter 349, Hawaii Revised Statutes, is amended by designating sections 349-12 to 349-14, Hawaii Revised Statutes, as part II and adding a title before section 349-12, Hawaii Revised Statutes, to read as follows:

**“PART II. OFFICE OF THE LONG-TERM CARE OMBUDSMAN”**

SECTION 5. Section 349-12, Hawaii Revised Statutes, is amended to read as follows:

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

(b) The executive office on aging shall have the responsibility to represent] **Office of the long-term care ombudsman. (a) There is established the office of the long-term care ombudsman in the executive office on aging to protect the health, safety, welfare, and rights of residents of long-term care facilities in accordance with state and federal law. The office of the long-term care ombudsman shall be headed by the long-term care ombudsman.**

(b) The long-term care ombudsman shall:

- (1) Be hired pursuant to chapter 76;
- (2) Be free of conflict of interest;
- (3) Have expertise and experience in the fields of long-term care and advocacy;
- (4) Serve on a full-time basis; and
- (5) Prepare an annual report in accordance with the federal Older Americans Act, as amended.

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

- (1) Represent the interests of residents of long-term care facilities, individually and as a class, [and] to [promote]:
  - (A) Protect their health, safety, welfare, and rights; and
  - (B) Promote improvement in the quality of care [received] they receive and [the] their quality of life [experienced by residents of long-term care facilities within the State. In meeting this responsibility, the executive office on aging shall:
- (1) Perform its duties and functions either directly or by other arrangement executed by the director with any public or private nonprofit organization, except with any organization responsible for licensing or certifying long-term care facilities in the State or which is engaged in offering long-term care services or which is an association (or an affiliate of such an association) of long-term care facilities];
- (2) [Investigate] Identify, investigate, and resolve complaints, including complaints against providers of long-term care services and their representatives, made by or on behalf of residents of long-term care facilities relating to [acts which] actions, inactions or decisions that may adversely affect the health, safety, welfare, [and] or rights of residents[;]

- of long-term care facilities, including the appointment and activities of guardians and representative payees;
- (3) Monitor and comment on the development and implementation of federal, state, and local laws, regulations, [and] policies [affecting], and actions that pertain to the health, safety, welfare, or rights of residents of long-term care facilities, including the adequacy of long-term care facilities and services in the [State] state, and recommend changes as necessary;
  - (4) Provide information as appropriate to public agencies regarding the problems of [older persons residing in] residents of long-term care facilities;
  - (5) Train volunteers [or] and employees [to serve institutionalized elders and to promote];
  - (6) Promote the development of citizen organizations to participate in the advocacy program;
  - ~~(6)~~ (7) Establish procedures for appropriate access by the [executive office on aging] long-term care ombudsman to long-term care facilities[;] and to residents of long-term care facilities;
  - ~~(7)~~ (8) Establish procedures for appropriate access by the [executive office on aging] long-term care ombudsman to all [patient] resident records or portions thereof necessary for the [executive office on aging] long-term care ombudsman to evaluate the merits of a specific complaint or complaints; provided that [patient] resident records shall be divulged only with the written consent of the [patient] resident or the [patient's] resident's legal representative;
  - ~~(8)~~ (9) Establish procedures for appropriate access to files maintained by the [executive office on aging,] long-term care ombudsman, except that the identity of any complainant or resident of a long-term care facility shall not be disclosed unless:
    - (A) [Such] The complainant or resident, or the complainant's or resident's legal representative, consents in writing to [such] the disclosure; [or]
    - (B) [Such] The complainant or resident consents orally and the consent is documented contemporaneously in writing by the long-term care ombudsman or designee; or
    - (C) The disclosure is required by court order[-];
  - (10) Provide technical support for the development of resident and family councils to help protect the health, safety, welfare, and rights of residents of long-term care facilities;
  - (11) Provide residents of long-term care facilities with:
    - (A) Information regarding how to obtain necessary services;
    - (B) Regular access to the office of the long-term care ombudsman at times deemed reasonable and necessary by the long-term care ombudsman; and
    - (C) Regular and timely responses to their complaints;
  - (12) Seek administrative, legal, or other remedies to carry out this part; and
  - (13) Carry out all other responsibilities as provided by state or federal law.
- (d) The long-term care ombudsman shall establish procedures to ensure that all designees, employees, and volunteers are free of conflict of interest.
- (e) The long-term care ombudsman shall adopt rules pursuant to chapter 91 for the purposes of administering and implementing this part.
- (f) For the purposes of this part:  
"Conflict of interest" includes:

- (1) Any direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;
- (2) An ownership or investment interest in a long-term care facility or a long-term care service;
- (3) Employment by, or participation in the management of, a long-term care facility; and
- (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.

“Long-term care facility” means any:

- (1) Skilled nursing facility as defined in section 1819(a) of the Social Security Act, as amended;
- (2) Nursing facility, as defined in section 1919(a) of the Social Security Act, as amended;
- (3) Adult residential care home, including any expanded adult residential care home;
- (4) Assisted living facility;
- (5) Intermediate care facility as defined in section 1905(c) of the Social Security Act, as amended; and
- (6) Other similar facility licensed by the State serving elders.’’

SECTION 6. Section 349-13, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§349-13[H]~~ **Access to long-term care facilities.** (a) ~~[Any]~~ A long-term care facility [which receives public funds] shall permit immediate access to the long-term facility and to the residents of the long-term care facility to the [executive office on aging in] long-term care ombudsman or designee at any time deemed necessary and reasonable by the long-term care ombudsman for the performance of [its] the duties and functions under this [chapter.] part.

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

(c) A long-term care facility shall permit access by the long-term care ombudsman or designee to all resident records or portions thereof necessary for the long-term care ombudsman to evaluate the merits of any complaint; provided that resident records shall be divulged only with the written consent of the resident or the resident’s legal representative.

(d) The long-term care ombudsman shall report violations of this section to the department of health.

(e) The department of health shall adopt rules, including the establishment of administrative fines or other penalties, pursuant to chapter 91 for the violation of this section.’’

SECTION 7. Section 349-14, Hawaii Revised Statutes, is amended to read as follows:

“**§349-14 Retaliatory acts by facilities or facility employees prohibited.**

(a) No resident of a long-term care facility seeking advocacy assistance as provided for in section 349-12 or making a complaint concerning a long-term care facility or any of its employees shall be subject to any retaliatory act by the long-term care facility or any of its employees for seeking advocacy assistance or making a complaint[; provided that for].

(b) No person seeking advocacy assistance as provided for in section 349-12 or making a complaint concerning a long-term care facility or any of its employees

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on behalf of a resident of a long-term care facility shall be subject to any retaliatory act by the long-term care facility or any of its employees for seeking advocacy assistance or making a complaint.

(c) For the purposes of this ~~[chapter,]~~ section, the term “retaliatory act” ~~[shall include, but not be limited to,]~~ includes actual or threatened physical injury, psychological abuse or neglect, sexual abuse, negligent treatment, maltreatment, or any form of discrimination as reprisal for seeking advocacy assistance or making a complaint.

(d) A violation of this section shall be reported by the ~~[executive office on aging]~~ the<sup>1</sup> long-term care ombudsman to the appropriate police department or prosecuting attorney.

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

SECTION 8. Chapter 349, Hawaii Revised Statutes, is amended by designating section 349-15, Hawaii Revised Statutes, as part III and adding a title before section 349-15, Hawaii Revised Statutes, to read as follows:

### “PART III. CAREGIVER SUPPORT SERVICES”

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 11. This Act shall take effect upon its approval; provided that section 2 shall take effect on January 1, 2008.

(Approved May 24, 2007.)

#### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.