
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 state long-term
9 care ombudsman in achieving the goals of the program as mandated
10 by 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 state long-term care ombudsman[-] with the assistance of three
4 local long-term care ombudsmen, to be appointed by the state
5 long-term care ombudsman with the approval of the director of
6 the executive office on aging, one situated in the county of
7 Hawaii, one situated in the county of Kauai, and one situated in
8 the county of Maui.

9 (b) The state long-term care ombudsman and each local
10 ombudsman shall:

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

18 (c) The state long-term care ombudsman[7] and each local
19 ombudsman, personally or through a designee, shall:

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



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



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



- 1 (A) The complainant or resident, or the complainant's
- 2 or resident's legal representative, consents in
- 3 writing to the disclosure;
- 4 (B) The complainant or resident consents orally and
- 5 the consent is documented contemporaneously in
- 6 writing by the long-term care ombudsman or
- 7 designee; or
- 8 (C) The disclosure is required by court order;
- 9 (10) Provide technical support for the development of
- 10 resident and family councils to help protect the
- 11 health, safety, welfare, and rights of residents of
- 12 long-term care facilities;
- 13 (11) Provide residents of long-term care facilities with:
- 14 (A) Information regarding how to obtain necessary
- 15 services;
- 16 (B) Regular access to the office of the state long-
- 17 term care ombudsman at times deemed reasonable
- 18 and necessary by the state long-term care
- 19 ombudsman; and
- 20 (C) Regular and timely responses to their complaints;
- 21 (12) Seek administrative, legal, or other remedies to carry
- 22 out this part; and



1 (13) Carry out all other responsibilities as provided by
2 state or federal law.

3 (d) The state long-term care ombudsman shall establish
4 procedures to ensure that all designees, employees, and
5 volunteers are free of conflict of interest.

6 (e) The state long-term care ombudsman shall adopt rules
7 pursuant to chapter 91 for the purposes of administering and
8 implementing this part.

9 (f) For the purposes of this part:

10 "Conflict 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:



- 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 or certified by the
- 11 State serving elders."

12 SECTION 3. Section 349-22, Hawaii Revised Statutes, is
13 amended:

14 1. By amending subsection (a) to read:

15 "(a) A long-term care facility shall permit immediate
16 access to the long-term facility and to the residents of the
17 long-term care facility to the state long-term care ombudsman or
18 designee at any time deemed necessary and reasonable by the
19 state long-term care ombudsman for the performance of the duties
20 and functions under this part."

21 2. By amending subsections (c) and (d) to read:



1 "(c) A long-term care facility shall permit access by the
2 state long-term care ombudsman or designee to all resident
3 records or portions thereof necessary for the state long-term
4 care ombudsman to evaluate the merits of any complaint[+
5 ~~provided that resident records shall be divulged only with the~~
6 ~~written consent of the resident or the resident's legal~~
7 ~~representative].~~

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

10 SECTION 4. Section 349-23, Hawaii Revised Statutes, is
11 amended by amending subsection (d) to read as follows:

12 "(d) A violation of this section shall be reported by the
13 state long-term care ombudsman to the appropriate police
14 department or prosecuting attorney."

15 SECTION 5. Section 349-24, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "~~+~~**\$349-24**~~+~~ **Wilful interference; prohibited.** Any
18 individual, including any long-term care facility or long-term
19 care facility employee, who wilfully interferes with or impedes
20 the state long-term care ombudsman or designee in the
21 performance of the state long-term care ombudsman's or
22 designee's duties pursuant to this part shall be guilty of a

1 misdemeanor. Each separate act of wilful interference and each
2 day during which any wilful interference continues shall
3 constitute a separate offense."

4 SECTION 6. Section 349-25, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) The state long-term care ombudsman shall provide each
7 long-term care facility with brochures and a poster with
8 information regarding the office of the state long-term care
9 ombudsman, including the name, address, and telephone number of
10 the office of the state long-term care ombudsman and any local
11 long-term care ombudsmen, and a brief description of the
12 services provided by the office of the state long-term care
13 ombudsman."

14 SECTION 7. Section 457B-6, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§457B-6 Powers and duties of director.** In addition to
17 any other powers and duties authorized by law, the director
18 shall:

19 (1) Develop, impose, and enforce standards [~~which~~] that
20 shall be met by individuals in order to receive a
21 license as a nursing home administrator[~~which~~]. The
22 standards shall be designed to insure that nursing



1 home administrators shall be individuals who, by
2 training or experience in the field of institutional
3 administration, are qualified to serve as nursing home
4 administrators;

5 (2) Develop and apply appropriate techniques, including
6 examinations and investigations, for determining
7 whether an individual meets the standards of this
8 chapter or the rules adopted pursuant thereto;

9 (3) Issue licenses to individuals determined, after the
10 application of appropriate techniques, to meet the
11 required standards, and revoke or suspend licenses in
12 any case where the individual holding a license is
13 determined substantially to have failed to conform to
14 the required standards of this chapter or the rules
15 adopted pursuant thereto;

16 (4) Establish and carry out procedures designed to insure
17 that individuals licensed as nursing home
18 administrators [~~shall~~], during any period that they
19 serve as such, shall comply with the required
20 standards. The director shall also initiate and
21 maintain cooperative arrangements with the state long-
22 term care ombudsman, department of human services, and



- 1 the department of health for the sharing of
- 2 information on the performance of administrators;
- 3 (5) Receive, investigate, and take appropriate action with
- 4 respect to any charge or complaint filed with the
- 5 department to the effect that any individual licensed
- 6 as a nursing home administrator has failed to comply
- 7 with the requirements of this chapter or the rules
- 8 adopted pursuant thereto;
- 9 (6) Adopt in accordance with chapter 91 rules ~~[aæ]~~ that
- 10 may be necessary for the purposes of this chapter; and
- 11 (7) Maintain a record of all proceedings."

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

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

20 SECTION 9. Statutory material to be repealed is bracketed
 21 and stricken. New statutory material is underscored.

22 SECTION 10. This Act shall take effect on July 1, 2008.



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.
(SB2151 SD2)

