



GOV. MSG. NO 851

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,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

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
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 caregiving or services provided
12 in 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 caregiving and quality of life of long-
16 term care residents. In addition, the long-term care ombudsman
17 provides information, referrals, and consultations to families,



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
18 shall be guilty of a misdemeanor. Each separate act of wilful
19 interference and each day during which any wilful interference
20 continues shall constitute a separate offense.

21 §349- Posting and distribution of information. (a) The
22 long-term care ombudsman shall provide each long-term care



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:



1 "~~§349-12 [Long term care facilities. (a) For purposes of~~
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(e) of the Social Security Act, as~~
6 ~~amended, any nursing home as defined in section 1908(e) of the~~
7 ~~Social Security Act, as amended, and any other similar adult~~
8 ~~care 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



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

3 (c) The long-term care ombudsman, personally or through a
4 designee, 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 [received] they receive and [the] their quality
12 of life [~~experienced by residents of long-term~~
13 ~~care facilities within the State. In meeting~~
14 ~~this responsibility, the executive office on~~
15 ~~aging shall.~~

16 ~~(1) 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~~



1 ~~er 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 [~~State~~] state, and recommend changes as
19 necessary;

20 (4) Provide information as appropriate to public agencies
21 regarding the problems of [~~elder persons residing in~~]
22 residents of long-term care facilities;



- 1 (5) Train volunteers [~~or~~] and employees [~~to serve~~
2 ~~institutionalized elders and to promote~~];
- 3 (6) Promote the development of citizen organizations to
4 participate in the advocacy program;
- 5 [~~(6)~~] (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 [~~(7)~~] (8) Establish procedures for appropriate access by
10 the [~~executive office on aging~~] long-term care
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 [~~patient's~~] resident's legal representative;
- 18 [~~(8)~~] (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:



- 1 (A) [~~Such~~] The complainant or resident, or the
2 complainant's or resident's legal representative,
3 consents in writing to [~~such~~] the disclosure;
4 [~~or~~]
- 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 (C) The disclosure is required by court order[-];
- 10 (10) Provide technical support for the development of
11 resident and family councils to help protect the
12 health, safety, welfare, and rights of residents of
13 long-term care facilities;
- 14 (11) Provide residents of long-term care facilities with:
- 15 (A) Information regarding how to obtain necessary
16 services;
- 17 (B) Regular access to the office of the long-term
18 care ombudsman at times deemed reasonable and
19 necessary by the long-term care 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 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 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 by the State serving
11 elders."

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

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



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 long-term care facility or any of its



1 employees for seeking advocacy assistance or making a
2 complaint [~~provided that for~~].

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 [~~(b)~~] (e) Any long-term care facility or long-term care
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."



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



GOVERNOR OF THE STATE OF HAWAII

