

# PROPOSED

HOUSE OF REPRESENTATIVES  
TWENTY-FOURTH LEGISLATURE, 2007  
STATE OF HAWAII

H.B. NO. 807  
H.D. 1  
S.D. 1

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## 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,



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1 service providers, and the general public on long-term  
2 caregiving 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



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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 adding two new sections to part II to be  
5 appropriately designated and to read as follows:

6 "§349- Wilful interference; prohibited. Any individual,  
7 including any long-term care facility or long-term care facility  
8 employee, who wilfully interferes with or impedes the long-term  
9 care ombudsman or designee in the performance of the long-term  
10 care ombudsman's or designee's duties pursuant to this part  
11 shall be guilty of a misdemeanor. Each separate act of wilful  
12 interference and each day during which any wilful interference  
13 continues shall constitute a separate offense.

14 §349- Posting and distribution of information. (a) The  
15 long-term care ombudsman shall provide each long-term care  
16 facility with brochures and a poster with information regarding  
17 the office of the long-term care ombudsman, including the name,  
18 address, and telephone number of the office of the long-term  
19 care ombudsman, and a brief description of the services provided  
20 by the office of the long-term care ombudsman.

21 (b) A long-term care facility shall provide each resident  
22 of the long-term facility with a copy of the brochure and shall



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1 post the poster in a conspicuous location that is accessible to  
2 all residents of the long-term care facility."

3 SECTION 3. 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 4. 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 5. 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.~~



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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 health, safety, welfare, and rights of residents of  
6       long-term care facilities in accordance with state and federal  
7       law. The office of the long-term care ombudsman shall be headed  
8       by the long-term care ombudsman.

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

10       (1) Be hired pursuant to chapter 76;

11       (2) Be free of conflict of interest;

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

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

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

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

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



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- 1           (A) Protect their health, safety, welfare, and  
2           rights; and
- 3           (B) Promote improvement in the quality of care  
4           ~~[received]~~ they receive and ~~[the]~~ their quality  
5           of life ~~[experienced by residents of long term~~  
6           ~~care facilities within the State. In meeting~~  
7           ~~this responsibility, the executive office on~~  
8           ~~aging shall:~~
- 9           ~~(1) Perform its duties and functions either directly or by~~  
10           ~~other arrangement executed by the director with any~~  
11           ~~public or private nonprofit organization, except with~~  
12           ~~any organization responsible for licensing or~~  
13           ~~certifying long term care facilities in the State or~~  
14           ~~which is engaged in offering long term care services~~  
15           ~~or which is an association (or an affiliate of such an~~  
16           ~~association) of long term care facilities];~~
- 17           (2) ~~[Investigate]~~ Identify, investigate, and resolve  
18           complaints, including complaints against providers of  
19           long-term care services and their representatives,  
20           made by or on behalf of residents of long-term care  
21           facilities relating to ~~[acts which]~~ actions, inactions  
22           or decisions that may adversely affect the health,



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- 1 safety, welfare, ~~[and]~~ or rights of residents~~[+]~~ of  
2 long-term care facilities, including the appointment  
3 and activities of guardians and representative payees;
- 4 (3) Monitor and comment on the development and  
5 implementation of federal, state, and local laws,  
6 regulations, ~~[and]~~ policies [affecting], and actions  
7 that pertain to the health, safety, welfare, or rights  
8 of residents of long-term care facilities, including  
9 the adequacy of long-term care facilities and services  
10 in the State, and recommend changes as necessary;
- 11 (4) Provide information as appropriate to public agencies  
12 regarding the problems of ~~[elder persons residing in]~~  
13 residents of long-term care facilities;
- 14 (5) Train volunteers ~~[or]~~ and employees ~~[to serve~~  
15 ~~institutionalized elders and to promote]~~;
- 16 (6) Promote the development of citizen organizations to  
17 participate in the advocacy program;
- 18 ~~[(6)]~~ (7) Establish procedures for appropriate access by  
19 the ~~[executive office on aging]~~ long-term care  
20 ombudsman to long-term care facilities~~[+]~~ and to  
21 residents of long-term care facilities;



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



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1            (C) The disclosure is required by court order[-];

2            (10) Provide technical support for the development of  
3            resident and family councils to help protect the  
4            health, safety, welfare, and rights of residents of  
5            long-term care facilities;

6            (11) Provide residents of long-term care facilities with:

7            (A) Information regarding how to obtain necessary  
8            services;

9            (B) Regular access to the office of the long-term  
10           care ombudsman at times deemed reasonable and  
11           necessary by the long-term care ombudsman; and

12           (C) Regular and timely responses to their complaints;

13           (12) Seek administrative, legal, or other remedies to carry  
14           out this part; and

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

17           (d) The long-term care ombudsman shall establish  
18           procedures to ensure that all designees, employees, and  
19           volunteers are free of conflict of interest.

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



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1        (f) For the purposes of this part:

2        "Conflict of interest" includes:

3        (1) Any direct involvement in the licensing or  
4                certification of a long-term care facility or of a  
5                provider of a long-term care service;

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

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

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

14       "Long-term care facility" means any:

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

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

19       (3) Adult residential care home, including any expanded  
20               adult residential care home;

21       (4) Assisted living facility;



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- 1        (5) Intermediate care facility as defined in section  
2            1905(c) of the Social Security Act, as amended; and  
3        (6) Other similar facility licensed by the State serving  
4            elders."

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

- 7            "~~{}~~§349-13~~}~~ **Access to long-term care facilities.** (a)  
8        ~~[Any]~~ A long-term care facility ~~[which receives public funds]~~  
9        shall permit immediate access to the long-term facility and to  
10       the residents of the long-term care facility to the ~~[executive~~  
11       ~~office on aging in]~~ long-term care ombudsman or designee at any  
12       time deemed necessary and reasonable by the long-term care  
13       ombudsman for the performance of ~~[its]~~ the duties and functions  
14       under this ~~[chapter.]~~ part.  
15            (b) Access to the residents of the long-term care facility  
16        shall include the provision of privacy.  
17            (c) A long-term care facility shall permit access by the  
18        long-term care ombudsman or designee to all resident records or  
19        portions thereof necessary for the long-term care ombudsman to  
20        evaluate the merits of a complaint; provided that resident  
21        records shall be divulged only with the written consent of the  
22        resident or the resident's legal representative.



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

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

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

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

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



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

7        (d) A violation of this section shall be reported by the  
 8 [~~executive office on aging]~~ the long term care ombudsman to the  
 9 appropriate police department or prosecuting attorney.

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

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

19                    **"PART III. CAREGIVER SUPPORT SERVICES"**

20        SECTION 9. There is appropriated out of the general  
 21 revenues of the State of Hawaii the sum of \$311,628 or so much  
 22 thereof as may be necessary for fiscal year 2007-2008 and the



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1 sum of \$236,627 or so much thereof as may be necessary for  
2 fiscal year 2008-2009 for three permanent program specialist IV  
3 positions and one permanent clerk typist II, for the operation  
4 and delivery of a regional long-term care ombudsman program on  
5 the neighbor islands.

6 The sums appropriated shall be expended by the department  
7 of health for the purposes of this Act.

8 SECTION 10. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 11. This Act shall take effect upon its approval;  
11 provided that section 9 shall take effect on July 1, 2007;  
12 provided further that section 2 shall take effect on January 1,  
13 2008.



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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.

(SD1)

