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# A BILL FOR AN ACT

RELATING TO LONG-TERM CARE.

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

1 PART I

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

11 The long-term care ombudsman investigates and resolves  
12 problems or complaints about the care or services provided in  
13 long-term care facilities. The long-term care ombudsman also  
14 works with long-term care facilities, community organizations,  
15 residents, family councils, and other interested parties to  
16 improve the quality of life of long-term care residents. In  
17 addition, the long-term care ombudsman provides information,



1 referrals, and consultations to families, service providers, and  
2 the general public on long-term care 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 part 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



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

17 "PART III. CAREGIVER SUPPORT SERVICES"

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

20 "~~§349-12 [Long term care facilities. (a) For purposes of~~  
21 ~~this chapter, the term "long term care facilities" means any~~  
22 ~~skilled nursing facility as defined in section 1861(j) of the~~



1 ~~Social Security Act, as amended, any intermediate care facility~~  
2 ~~as defined in section 1905(e) of the Social Security Act, as~~  
3 ~~amended, any nursing home as defined in section 1908(e) of the~~  
4 ~~Social Security Act, as amended, and any other similar adult~~  
5 ~~care facility licensed by the State serving elders.~~

6 ~~(b) The executive office on aging shall have the~~  
7 ~~responsibility to represent] Office of the long-term care~~  
8 ombudsman. (a) There is established the office of the  
9 long-term care ombudsman in the executive office on aging to  
10 protect the human and civil rights of long-term care residents  
11 in accordance with state and federal law. The office of the  
12 long-term care ombudsman shall be headed by the long-term care  
13 ombudsman.

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

15 (1) Be hired pursuant to chapter 76;

16 (2) Have expertise and experience in the fields of  
17 long-term care and advocacy; and

18 (3) Prepare an annual report.

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

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



1 promote improvement in the quality of care received  
2 and the quality of life experienced by residents of  
3 long-term care facilities within the State[. In  
4 meeting this responsibility, the executive office on  
5 aging shall:

6 ~~(1) Perform its duties and functions either directly or by~~  
7 ~~other arrangement executed by the director with any~~  
8 ~~public or private nonprofit organization, except with~~  
9 ~~any organization responsible for licensing or~~  
10 ~~certifying long term care facilities in the State or~~  
11 ~~which is engaged in offering long term care services~~  
12 ~~or which is an association (or an affiliate of such an~~  
13 ~~association) of long term care facilities];~~

14 (2) Investigate and resolve complaints made by or on  
15 behalf of residents of long-term care facilities  
16 relating to acts [~~which~~] that may adversely affect the  
17 health, safety, welfare, [~~and~~] or rights of  
18 residents[~~r~~] of long-term care facilities;

19 (3) Monitor the development and implementation of federal,  
20 state, and local laws, regulations, and policies  
21 affecting long-term care facilities in the State;



- 1 (4) Provide information as appropriate to public agencies  
2 regarding the problems of older persons residing in  
3 long-term care facilities;
- 4 (5) Train volunteers or employees to serve  
5 institutionalized elders and to promote the  
6 development of citizen organizations to participate in  
7 the advocacy program;
- 8 (6) Establish procedures for appropriate access by the  
9 ~~[executive office on aging]~~ long-term care ombudsman  
10 to long-term care facilities~~[,]~~ and to residents of  
11 long-term care facilities;
- 12 (7) Establish procedures for appropriate access by the  
13 ~~[executive office on aging]~~ long-term care ombudsman  
14 to all patient records or portions thereof necessary  
15 for the ~~[executive office on aging]~~ long-term care  
16 ombudsman to evaluate the merits of a specific  
17 complaint or complaints; provided that patient records  
18 shall be divulged only with the written consent of the  
19 patient or the patient's legal representative;
- 20 (8) Establish procedures for appropriate access to files  
21 maintained by the ~~[executive office on aging,]~~  
22 long-term care ombudsman, except that the identity of



1 any complainant or resident of a long-term care  
2 facility shall not be disclosed unless:

- 3 (A) [~~Such~~] The complainant or resident, or the  
4 complainant's or resident's legal representative,  
5 consents in writing to [~~such~~] the disclosure; or  
6 (B) [~~Such~~] The disclosure is required by court  
7 order[-];

8 and

9 (9) Carry out any other activities as provided by state or  
10 federal law.

11 (d) For the purposes of this part, "long-term care  
12 facility" means any skilled nursing facility as defined in:

13 (1) Section 1861(j) of the Social Security Act, as  
14 amended;

15 (2) Any intermediate care facility as defined in Section  
16 1905(c) of the Social Security Act, as amended;

17 (3) Any nursing home as defined in Section 1908(e) of the  
18 Social Security Act, as amended; and

19 (4) Any other similar adult care facility licensed by the  
20 State serving elders."

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



1           "~~[f]~~ §349-13 ~~[f]~~ **Access to long-term care facilities.** (a)  
2 Any long-term care facility ~~[which]~~ that receives public funds  
3 shall permit access to the long-term facility and to the  
4 residents of the long-term care facility to the ~~[executive~~  
5 ~~office on aging in]~~ long-term care ombudsman or designee at any  
6 time deemed necessary and reasonable by the long-term care  
7 ombudsman for the performance of ~~[its]~~ the duties and functions  
8 under this ~~[chapter.]~~ part.

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

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

13           "**§349-14 Retaliatory acts by facilities or facility**  
14 **employees prohibited.** (a) No resident of a long-term care  
15 facility seeking advocacy assistance as provided for in section  
16 349-12 or making a complaint concerning a long-term care  
17 facility or any of its employees shall be subject to any  
18 retaliatory act by the long-term care facility or any of its  
19 employees for seeking advocacy assistance or making a  
20 complaint ~~[, provided that for]~~ .

21           (b) No person seeking advocacy assistance as provided for  
22 in section 349-12 or making a complaint concerning a long-term



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

5 (c) For the purposes of this [~~chapter,~~] section, the term  
6 "retaliatory act" shall include [~~, but not be limited to,~~] actual  
7 or threatened physical injury, psychological abuse or neglect,  
8 sexual abuse, negligent treatment, maltreatment, or any form of  
9 discrimination as reprisal for seeking advocacy assistance or  
10 making a complaint. A violation of this section shall be  
11 reported by the [~~executive office on aging~~] the long term care  
12 ombudsman to the appropriate police department or prosecuting  
13 attorney.

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

19 PART II

20 SECTION 8. The delivery of long-term care in Hawaii has  
21 characteristically been uncoordinated, making it difficult for  
22 consumers to obtain information about long-term care options and



1 services. Much of this has to do with the fact that different  
2 programs have their own eligibility requirements, funding  
3 mandates, care benefits, provider participation regulations,  
4 administrative structure, and service delivery mechanisms.  
5 Consequently, it is difficult to coordinate a comprehensive  
6 continuum of long-term care (ranging from nursing homes to home  
7 and community-based services) for the elderly and the disabled.

8 In 2005, Hawaii was selected to receive a grant from the  
9 United States Department of Health and Human Services to develop  
10 an aging and disability resource center program. The grant is  
11 intended to help Hawaii develop "one-stop shop" programs at the  
12 community level that can serve as the entry point to the long-  
13 term services and support system. The vision is to have  
14 resource centers in every community serving as highly visible  
15 and trusted places where people can turn for information on the  
16 full range of long-term care support options, and with a  
17 streamlined process for screening, intake, assessment, and  
18 eligibility determination. Long-term care support refers to a  
19 wide range of in-home, community-based, and institutional  
20 services and programs that are designed to help individuals with  
21 disabilities.



1           The executive office on aging, in partnership with the  
2 Hawaii county office of aging and the city and county of  
3 Honolulu elderly affairs division, is already developing an  
4 aging and disability resource center in Hawaii county. The  
5 three-year project commenced in October, 2005, and is due for  
6 completion by September, 2008. A second resource center is  
7 planned for the city and county of Honolulu. A state advisory  
8 board has already been established to provide public input and  
9 feedback on the project development, and to develop a statewide  
10 access plan for future replication. Each project will also have  
11 its own steering committee or advisory board at the county level  
12 to assist in the specific site development.

13           The Hawaii county project received additional funding from  
14 the Hawaii county council, with support from the Hawaii county  
15 mayor, to enable the project to lease the former Sun Sun Lau  
16 Chinese Restaurant in Hilo as the physical site. Renovations  
17 are currently underway at the Hilo site with a target completion  
18 date of mid-2007. The Hawaii county office of aging will co-  
19 locate in this centralized facility with other aging and  
20 disability services and providers, including the department of  
21 human services (medicaid program), the Hawaii Center of  
22 Independent Living, and the Legal Aid Society.



1           The city and county of Honolulu project will initially be a  
2 virtual site. It will build upon the city and county of  
3 Honolulu elderly affairs division's current senior hotline  
4 telephone information and assistance program, and will develop a  
5 comprehensive resource website. The overall goal is to  
6 eventually establish aging and disability resource center sites  
7 in all of the counties to provide statewide access.

8           The legislature finds that the aging and disability  
9 resource center program will improve access to long-term care  
10 information and options for both the elderly and the disabled by  
11 facilitating their search for needed services.

12           The purpose of this part is to support the aging and  
13 disability resource center program by appropriating funds to  
14 supplement its development. The funds shall be used to:

- 15           (1) Contract with a state management information  
16           consultant to:
- 17           (A) Identify management information system needs;
  - 18           (B) Assist with vendor selection;
  - 19           (C) Ensure compliance with management information  
20           system requirements;



- 1 (D) Provide resources and technical assistance for  
2 project evaluation, intake, and database  
3 development;
- 4 (E) Troubleshoot technical problems; and  
5 (F) Assist with systems integration;
- 6 (2) Purchase additional management information system  
7 products, including software licensing, server  
8 clusters, installation, staff training, computer  
9 hardware, and technical support;
- 10 (3) Install a statewide toll-free telephone system for the  
11 public to contact the aging and disability resource  
12 center sites. This includes the installation of the  
13 single server number, telephone equipment, cable  
14 lines, phone system upgrades, and special equipment  
15 for blind and deaf consumers;
- 16 (4) Coordinate and implement consumer education and  
17 outreach campaigns, including outreach coordination,  
18 the production and printing of brochures and posters,  
19 media ads, presentations and exhibits at senior and  
20 disability events or focal centers, bilingual  
21 translation, and other promotional activities that



- 1 will educate consumers and the general public about  
2 aging and disability resource center services;
- 3 (5) Continue the coordination and implementation of the  
4 Hawaii county site;
- 5 (6) Continue the coordination and implementation of the  
6 Honolulu county site; and
- 7 (7) Continue the state-level coordination and evaluation  
8 activities of the project.

9 PART III

10 SECTION 9. There is appropriated out of the general  
11 revenues of the State of Hawaii the sum of \$341,980 or so much  
12 thereof as may be necessary for fiscal year 2007-2008 and the  
13 same sum or so much thereof as may be necessary for fiscal year  
14 2008-2009 for three permanent program specialist IV positions  
15 and one permanent clerk typist II, for the operation and  
16 delivery of a regional long-term care ombudsman program on the  
17 neighbor islands.

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

20 SECTION 10. There is appropriated out of the general  
21 revenues of the State of Hawaii the sum of \$370,000 or so much  
22 thereof as may be necessary for fiscal year 2007-2008 and the



1 sum of \$230,000 or so much thereof as may be necessary for  
2 fiscal year 2008-2009 to supplement the development of the aging  
3 and disability resource center program.

4 The sums appropriated shall be expended by the department  
5 of health for the purposes of part II of this Act.

6 SECTION 11. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 12. This Act shall take effect upon its approval;  
9 provided that sections 9 and 10 shall take effect on July 1,  
10 2007.



**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.

(HB818 HD1)

