

## **CHAPTER 349 EXECUTIVE OFFICE ON AGING**

### PART I. GENERAL PROVISIONS

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#### Cross References

Actions or penalties for violations committed against elders, see §§28-94, 412:3-114.5, 444-10.7, 454-4.5, 480-13, 480-13.5, 485A-603.5, 485A-604.5, and 487-14.

## **PART I. GENERAL PROVISIONS**

#### Note

Sections 349-1 to 349-11 designated as part I by L 2007, c 93, §3.

**§349-2 Executive office on aging; appointments.** (a) There is established within the department of health, for administrative purposes only, an executive office on aging.

(b) The head of this office shall be known as the director of the executive office on aging, hereinafter referred to as director. The director shall have professional training in the field of social work, education, public health, and other related fields; extensive direct experience in programs or services related to elders; and recent experience in a supervisory, consultative, or administrative position. The director shall be nominated and appointed by the governor without regard to chapters 76 and 89. Effective July 1, 2005, the director shall be paid a salary set by the appointing authority that shall not exceed sixty-nine per cent of the salary of the director of human resources development. The director shall be included in any benefit program generally applicable to the officers and employees of the State. [L 1976, c 217, pt of §2; am L 1982, c 129, §12; am L 1986, c 128, §11; am L 1989, c 329, §9; am L 1990, c 67, §8; am L 2002, c 148, §39; am L 2003, c 204, §1; am L 2005, c 226, §9]

**§349-3 General functions, duties, and powers of the director. AMENDED.** "Chapters 76 and 77" changed to "chapter 76". L 2000, c 253, §150.

**§§349-12 to 14 Renumbered as §§349-21 to 23.**

**[PART II.] CAREGIVER SUPPORT SERVICES**

## Note

Part heading added by L 2007, c 93, §8.

## Revision Note

Enacted as part III, this part was renumbered as part II pursuant to §23G-15.

**[§349-15 Coordination and development of caregiver support services.]**

The executive office on aging shall coordinate a statewide system of caregiver support services by, among other things:

- (1) Integrating family caregiver support with the aging and disability resource center demonstration project;
- (2) Analyzing the long-term care needs of older adults and the capacity of family and informal caregivers to help them remain safely at home;
- (3) Advocating, mobilizing, and coordinating employer and community resources to enable and augment family caregiver support;
- (4) Establishing and maintaining protocols and standards for federal and state caregiver services administered by state, county, or other local agencies on aging;
- (5) Establishing and supervising the alignment of long-term care advocacy assistance staff caregiver support objectives with the planning, resource development, grants management, data management, and evaluation functions of the executive office on aging; and
- (6) Coordinating statewide support for grandparents and other aging relative caregivers of children eighteen and under. [L 2006, c 262, §5]

## Revision Note

Section codified pursuant to §23G-15.

**[PART III.] OFFICE OF THE LONG-TERM CARE OMBUDSMAN**

## Note

Part heading added by L 2007, c 93, §4.

## Revision Note

Enacted as part II, this part was renumbered as part III and §§349-21 to 23 were renumbered from §§349-12 to 14 pursuant to §23G-15.

**[§349-21] 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.

## SOCIAL SERVICES

- (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, to:
    - (A) Protect their health, safety, welfare, and rights; and
    - (B) Promote improvement in the quality of care they receive and their quality of life;
  - (2) 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 actions, inactions or decisions that may adversely affect the health, safety, welfare, 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, policies, 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, and recommend changes as necessary;
  - (4) Provide information as appropriate to public agencies regarding the problems of residents of long-term care facilities;
  - (5) Train volunteers and employees;
  - (6) Promote the development of citizen organizations to participate in the advocacy program;
  - (7) Establish procedures for appropriate access by the long-term care ombudsman to long-term care facilities and to residents of long-term care facilities;
  - (8) Establish procedures for appropriate access by the long-term care ombudsman to all resident records or portions thereof necessary for the long-term care ombudsman to evaluate the merits of a specific complaint or complaints; provided that resident records shall be divulged only with the written consent of the resident or the resident's legal representative;
  - (9) Establish procedures for appropriate access to files maintained by the 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) The complainant or resident, or the complainant's or resident's legal representative, consents in writing to the disclosure;
    - (B) 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. [L 1979, c 206, §2(1); gen ch 1985; am L 1990, c 67, §8; am L 2007, c 93, §5]

#### Cross References

Dependent elder abuse; suits by the State; civil penalties, see §28-94.  
Investigations of nurse aide abuse, see §346-47.  
Long-term care financing, see chapter 346C.

#### Law Journals and Reviews

Holding Hawai'i Nursing Facilities Accountable for the Inadequate Pain Management of Elderly Residents. 27 UH L. Rev. 233.

[§349-22] **Access to long-term care facilities.** (a) A long-term care facility shall permit immediate access to the long-term facility and to the residents of the long-term care facility to the long-term care ombudsman or designee at any time deemed necessary and reasonable by the long-term care ombudsman for the performance of the duties and functions under this 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. [L 1979, c 206, §2(2); am L 2007, c 93, §6]

**[§349-23] 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 [349-21] 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.

(b) No person seeking advocacy assistance as provided for in section [349-21] or making a complaint concerning a long-term care facility or any of its employees 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 section, the term "retaliatory act" 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 long-term care ombudsman to the appropriate police department or prosecuting attorney.

(e) Any long-term care facility or long-term care facility employee who violates 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. [L 1979, c 206, §2(3); am L 1982, c 104, §1; am L 2007, c 93, §7]

**[§349-24] 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. [L 2007, c 93, pt of §2]

**[§349-25] 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. [L 2007, c 93, pt of §2]