

STATE OF ALASKA

DEPARTMENT OF REVENUE
Alaska Mental Health
Trust Authority

BILL WALKER, GOVERNOR

Office of the Long Term Care Ombudsman

3745 Community Park Loop, Suite 200
Anchorage AK 99508
Phone (907) 334-4480
Fax (907) 334-4486

February 19, 2015

Representative Shelley Hughes
Alaska State Capitol, Room 13
Juneau, Alaska 99801-1182

Re: HB 8 Powers of Attorney and other substitute decision-making documents

Representative Hughes,

Thank you for sponsoring HB 8 enacting significant reforms to Alaska's power of attorney law. The Office of the Long Term Care Ombudsman strongly supports this bill which adds new sections and clarifies existing language for the implementation of power of attorney documents in Alaska. It also brings Alaska's statute closer to conforming to the Uniform Powers of Attorney Act and the Uniform Recognition of Substitute Decision-Making Documents Act.

As you know, the Office of the Long Term Care Ombudsman frequently investigates cases in which family members, friends, and others misuse power of attorney documents to exploit vulnerable older Alaskans. Seniors need a legal document that allows them (the principal) to delegate authority to a trusted person (the agent) to handle financial and other matters according to their wishes, including when they become incapacitated. In the cases the Long Term Care Ombudsman investigates, unscrupulous agents spend the senior's assets for items that do not benefit the senior. These situations range from personal care attendants using an elder's debit card to withdraw money to purchase items for themselves to situations where a family member has spent hundreds of thousands of dollars on vacations and automobiles for themselves. Power of attorney documents are also used to transfer the elder's home to the person who holds the power of attorney. Sometimes these agents even dissolve a family trust, directly ignoring the senior's expressed wishes for the distribution of their assets. After working all their adult lives to save for old age, older Alaskans are defrauded of assets that should be used to provide for their care.

HB 8 clarifies and updates the current definitions as well as adds new definitions needed to implement this bill. One of these clarifications is to change the word "disability" to "incapacity" which is important as individuals can become unable to make decisions on their own behalf but not have a disability. The definitions have also been updated to keep pace with the technological advancements in our society including the use of electronic records and signatures. This bill clarifies that this law applies to any document that grants authority for an individual to act on behalf of another even if the words "power of attorney" are not used in the document. Another significant improvement for seniors is the clarification that a signature can be a tangible symbol or completed electronically so that seniors who have difficulty writing can still execute a power of attorney document.

HB 8 adds important protections by defining the duties of the agent and holds agents who violate these duties liable to restore or reimburse the principal or their successors. Section 13.26.327 is a new section that defines the duties of the agent and clarifies that an agent must act in accordance with the principal's wishes, best interest and within the scope of the power of attorney. The agent must also keep records showing their actions. They are required to preserve the principal's estate, if beneficial to the principal, and cooperate with other decision makers such as conservators or others designated to make health care decisions. In section 13.26.326, an agent who violates these new protections and uses the power of attorney for their own interest are liable to restore or reimburse the principal or principal's successors.

The Office of the Long Term Care Ombudsman is especially supportive of the changes to the power of attorney form. The form in this bill would require individuals to indicate "yes" or "no" for each of the fourteen powers they want to delegate. This is an improvement over the current form which requires individuals to cross out any powers they do not want to delegate, which is counter-intuitive. This change will help prevent older Alaskans from signing away their powers unintentionally. The new form also includes the option to delegate power over retirement plans and super powers (trusts, gifts, beneficiary designation, death deed transfers) which are not in the current form. This bill also provides provisions for judicial review when the principal, family member, state agency, care provider or other interested party feels the power of attorney document is being misused or abused.

Another section added to the bill clarifies when third parties must accept a power of attorney document and when they can decline. Currently, state law provides a "safe haven" which unintentionally encourages financial institutions to accept power of attorney, even when they believe them fraudulent. HB 8 will encourage institutions to refuse questionable powers of attorney and to report suspected exploitation to the authorities without fear of penalty. Timelines are also added for various procedures such as translations or seeking an opinion of counsel. It also makes it clear when a power of attorney enacted in another state is valid in Alaska. HB 8 clarifies under what conditions a power of attorney document can be terminated and directs the agent to notify the appropriate person when the principal is incapacitated.

The final section of the bill expands many of these same provisions to other substitute decision making documents in which a person gives power for an individual to make decisions on their behalf with respect to healthcare and personal care. This section also allows Alaska to align with the Uniform Recognition of Substitute Decision-Making Documents Act.

The Office of the Long Term Care Ombudsman believes that HB 8 strengthens Alaska's power of attorney law and will help prevent the exploitation of elders and other vulnerable adults as well as make it easier to prosecute individuals who abuse power of attorney documents. Thank you for your leadership in bringing this bill forward. Please do not hesitate to contact our office if we can assist you in this effort.

Sincerely,

A handwritten signature in black ink that reads "Teresa Holt". The signature is written in a cursive, flowing style.

Teresa Holt
State Long Term Care Ombudsman