

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Sobel, Chair
Senator Hays, Vice Chair

MEETING DATE: Monday, April 15, 2013
TIME: 1:00 —3:00 p.m.
PLACE: *Mallory Horne Committee Room, 37 Senate Office Building*

MEMBERS: Senator Sobel, Chair; Senator Hays, Vice Chair; Senators Altman, Braynon, Clemens, Dean, Detert, Diaz de la Portilla, Grimsley, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 108 Detert (Identical H 547)	Child Care Facilities; Requiring the Department of Children and Families to adopt rules to include specified requirements within minimum standards relating to a written plan for the daily provision of varied activities at a child care facility, etc. CF 04/15/2013 Temporarily Postponed ED RC	Temporarily Postponed
2	SB 110 Flores (Identical H 9)	Involuntary Examinations Under the Baker Act; Authorizing physician assistants and advanced registered nurse practitioners to initiate involuntary examinations under the Baker Act of persons believed to have mental illness, etc. CF 04/15/2013 Fav/CS HP JU	Fav/CS Yeas 8 Nays 0
3	SB 312 Braynon (Identical H 595)	Family Support Personnel Policies; Requiring the model rule establishing family support personnel policies to provide for a specified amount of leave for an employee who has a family member with a serious health condition, etc. CF 04/15/2013 Temporarily Postponed GO AGG AP	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Monday, April 15, 2013, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 590 Joyner (Identical H 941, Compare CS/H 943)	Fees and Costs Incurred in Guardianship Proceedings; Providing that fees and costs incurred by an attorney who has rendered services to a ward in compensation proceedings are payable from guardianship assets; directing that the examining committee be paid from state funds as court-appointed expert witnesses if a petition for incapacity is dismissed; requiring that a petitioner reimburse the state for expert witness fees if the court finds the petition to have been filed in bad faith, etc. JU 04/01/2013 Not Considered JU 04/08/2013 Favorable CF 04/15/2013 Favorable ACJ AP	Favorable Yeas 8 Nays 0
5	SB 610 Joyner (Similar CS/H 943, Compare H 941)	Public Records/Claim Settlement on Behalf of a Minor or Ward; Creating an exemption from public records requirements for records relating to the settlement of a claim on behalf of a minor or ward; authorizing a guardian ad litem, a ward, a minor, and a minor's attorney to inspect guardianship reports and court records relating to the settlement of a claim on behalf of a minor or ward, upon a showing of good cause; authorizing the court to direct disclosure and recording of an amendment to a report or court records relating to the settlement of a claim on behalf of a ward or minor, in connection with real property or for other purposes, etc. CF 04/15/2013 Fav/1 Amendment JU GO RC	Fav/1 Amendment (137920) Yeas 8 Nays 0
6	SB 804 Richter (Identical H 601)	Department of Elderly Affairs; Directing the Office of Program Policy Analysis and Government Accountability to conduct a review and evaluation of the functions of the Department of Elderly Affairs, etc. CF 04/15/2013 Favorable GO	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Monday, April 15, 2013, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 976 Sobel (Similar H 315)	Senior Services; Citing this act as the "Florida Act for Responsible Persons"; authorizing each county to create an independent special district by ordinance to provide funding for services for seniors; requiring elector approval to annually levy ad valorem taxes; requiring the district to comply with statutory requirements related to levying and fixing millage and filing financial or compliance reports; creating a governing council for the district, etc. CF 04/15/2013 Favorable CA AFT AP	Favorable Yeas 8 Nays 0
8	SB 1212 Soto (Similar CS/CS/H 1015, Compare H 187, H 1313, CS/CS/H 1319, CS/S 646)	State Ombudsman Program; Revising legislative intent with respect to citizen ombudsmen; deleting references to ombudsman councils and transferring their responsibilities to representatives of the Office of State Long-Term Care Ombudsman; reorganizing local ombudsman councils; establishing districts; providing duties of the State Long-Term Care Ombudsman Advisory Council; requiring long-term care facilities to provide representatives of the office with access to facilities, residents, and records for certain purposes; revising training requirements for representatives of the office and ombudsmen, etc. CF 04/15/2013 Fav/CS HP AHS AP	Fav/CS Yeas 8 Nays 0
9	SB 1748 Evers (Compare CS/H 1323)	Medicaid Nursing Home Eligibility; Specifying limitations and sanctions on persons transferring assets in order to become eligible for Medicaid nursing facility services, etc. CF 04/15/2013 Fav/CS AHS AP	Fav/CS Yeas 8 Nays 0
10	Other Related Meeting Documents		

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 108

INTRODUCER: Senator Detert

SUBJECT: Child Care Facilities

DATE: April 11, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Hendon	CF	Pre-meeting
2.			ED	
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 108 amends the minimum licensing standard for a child care facility plan of activities to specify that it include requirements for the appropriate use of confining equipment, periods of physical activity, and limitations on screen time,¹ as defined by rule of the Department of Children and Families (the department). The bill also corrects the name of the department as it appears in the definition section of ch. 402, F.S.

The bill is not expected to have a fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 402.302 and 402.305.

II. Present Situation:

Licensing of Child Care Facilities, Family Day Care Homes, and Large Family Child Care Homes

Child care facilities in the state must meet licensing standards that are established by the Department of Children and Family Services.² A child care facility generally includes any child care center or child care arrangement which provides child care for more than five children

¹ "Screen time," which is not currently defined in statute, could include television, video, DVD, computer, or similar media viewing.

² Section 402.305, F.S.

unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit.³

Licensing standards adopted by the department must be designed to address each of the following areas:

- The health, sanitation, safety, and adequate physical surroundings for all children in child care.
- The health and nutrition of all children in child care.
- The child development needs of all children in child care.⁴

In addition, the law requires child care facilities to have and to implement a written plan for the daily provision of varied activities and active and quiet play opportunities that are age appropriate for the children under care.⁵ The rules of the department implementing the statute require that the plan be posted in a conspicuous place that is accessible to parents, and that the plan meet the needs of the children being served and include scheduled activities that:

- Promote emotional, social, intellectual and physical growth;
- Include quiet and active play; both indoors and outdoors; and
- Include meals, snacks and nap times, if appropriate for the children under care.⁶

Florida law permits a county that meets or exceeds the state's minimum licensing requirements to designate a local agency to license child care facilities or to contract with DCF to delegate administration of the standards to the department.⁷ Currently, DCF is responsible for administering child care licensing in 62 of Florida's 67 counties. Five counties (Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota) administer their own inspections and licensure of child care facilities.⁸

The law also requires a family day care home either to obtain a license or to register annually with the department. A family day care home is an occupied residence in which child care is provided for children from at least two unrelated families for compensation. The maximum allowable number of children varies by the age of the children served.⁹ A family day care home is required to be licensed if it is presently licensed under a county licensing ordinance or if the board of county commissioners passes a resolution requiring family day care homes to be licensed. If a family day care home is not subject to licensure or does not volunteer to be licensed, then it must register annually with DCF.¹⁰ The department establishes by rule minimum standards for licensed family day care homes, which include requirements for staffing, training, maintenance of immunization records, minimum health and safety standards, reduced standards

³ Section 402.302(2), F.S.

⁴ Section 402.305(1), F.S.

⁵ Section 402.305(13), F.S.

⁶ Rule 65C-22.001(7)(a), F.A.C.

⁷ Section 402.306(1), F.S.

⁸ Fla. Dep't of Children and Families, *Child Care Regulation Licensing Information*, available at <http://www.dcf.state.fl.us/programs/childcare/licensing.shtml> (last visited Jan. 30, 2013).

⁹ Section 402.302(8), F.S.

¹⁰ Section 402.313(1), F.S.

for the regulation of child care by local governments which is provided during evening hours, and enforcement of these standards.¹¹

A large family child care home, which is similar in definition to a family day care home, is required to be licensed by the department according to the minimum standards it establishes by rule. These standards include requirements for staffing, maintenance of immunization records, minimum health standards, minimum safety standards, minimum square footage, and enforcement of standards.¹² Currently, the department's rule contains an identical requirement for posting a plan of activities to the requirement applicable to child care facilities.¹³

Currently, the department regulates 7,664 child care arrangements serving over 481,445 children in 62 of 67 Florida counties.¹⁴

Child Care Standards and Improvements Work Group

In 2010 the Secretary of the Department of Children and Families appointed a work group to examine child care standards and identify areas where improvement is required to provide an environment in which children can grow and thrive.¹⁵ The work group, which included representatives from child care providers, advocates, and professionals, met six times and issued its report in January 2011. While the report addressed a wide range of issues, it included a specific finding that Florida law currently lacks standards that address infant and toddler containment. The report recommended that time in confining equipment, such as cribs, high chairs, playpens, and seats, be restricted primarily to napping and care routines, and that infants and toddlers be free to move most of their awake time so as to promote necessary development of fine and gross motor skills. The report also recommended that a separate work group be established to examine family child care home policy and practice standards.¹⁶

National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs

The National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs, which are a joint collaborative project of the American Academy of Pediatrics, the American Public Health Association, and the National Resource Center for Health and Safety in Child Care and Early Education, recommend that a child not sit in a high chair or other equipment that constrains movement longer than 15 minutes, except at meals or snack times. Because children are continually developing their physical skills, they need opportunities to use and build on their physical abilities. Extended periods in the crib, high chair, or other confined space limit a child's physical growth and affect the child's social interactions.¹⁷

¹¹ Section 402.313(13), F.S.

¹² Section 402.3131(7), F.S.

¹³ Rule 65C-20.013(9), F.A.C.

¹⁴ Fla. Dep't of Children and Families, *Quick Facts* (Nov. 2012) available at <http://www.dcf.state.fl.us/newsroom/docs/quickfacts.pdf> (last visited Jan. 31, 2013).

¹⁵ Fla. Dep't of Children and Families, *Report of the Child Care Standards and Improvements Work Group* (Jan. 19, 2011), available at <http://www.flgov.com/wp-content/uploads/childadvocacy/csdm12.2ccwgreport.pdf> (last visited Jan. 30, 2013).

¹⁶ *Id.*

¹⁷ Am. Acad. of Pediatrics, Am. Pub. Health Ass'n, Nat'l Res. Ctr. for Health and Safety in Child Care and Early Education, *Standard 2.2.0.2: Limiting Infant/Toddler Time in Crib, High chair, Car Seat, Etc., Caring for our children: National health*

These same guidelines also recommend that children under two years of age not be permitted to view media or computers. Children two years of age and older should be limited to not more than 30 minutes of screen time once a week, and for educational or physical activity use, only. In the first two years of life, children's brains and bodies are undergoing critical periods of growth and development. It is important that they have positive interactions with people and not sit in front of a screen that takes time away from social interaction.¹⁸

In December 2011, the department initiated rulemaking to implement modifications to Chapter 65C-22, F.A.C., relating to Child Care Facilities, required as a result of legislation passed during the 2010 Session.¹⁹ Following a series of workshops, the department published a proposed rule in July 2012 that included, among the proposed modifications, changes to the planned activities standards limiting the use of confining equipment, and television, videos, movies, and video games. The Joint Administrative Procedure Committee (JAPC) raised a number of issues regarding provisions in the rule unrelated to these sections and notified the department that it was considering an objection. As an alternative, JAPC suggested the department postpone adoption to accommodate JAPC's continued review, which the department did on January 9, 2013.²⁰ The department anticipates filing the rule for adoption this summer.

III. Effect of Proposed Changes:

Section 1 amends s. 402.302(5), F.S., which is the definition of "Department," as the term is used in ch. 402, F.S., to change the reference from the "Department of Children and Family Services" to the "Department of Children and Families." This conforms the reference to the change made in Chapter 2012-84, Laws of Florida, which reorganized the Department of Children and Family Services and renamed it the Department of Children and Families.

Section 2 amends s. 402.305(13), F.S., to require the minimum licensing standard applicable to child care facilities for the plan of activities to include requirements for the appropriate use of confining equipment, periods of physical activity, and limitations on screen time.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

and safety performance standards; Guidelines for early care and education programs. (3rd ed. 2011), available at http://nrckids.org/CFOC3/PDFVersion/PDF_Color/CFOC3_ch2.pdf (last visited Jan. 30, 2013).

¹⁸ Am. Acad. of Pediatrics, Am. Pub. Health Ass'n, Nat'l Res. Ctr. for Health and Safety in Child Care and Early Education, *Standard 2.2.0.3: Limiting Screen Time – Media, Computer Time, Caring for our children: National health and safety performance standards; Guidelines for early care and education programs.* (3rd ed. 2011), available at http://nrckids.org/CFOC3/PDFVersion/PDF_Color/CFOC3_ch2.pdf (last visited Jan. 30, 2013).

¹⁹ Chapter 2010-161, Laws of Fla.; Chapter 2010-114, Laws of Fla.

²⁰ Conversation with Deborah Russo, Director, Office of Child Care Regulation & Background Screening, Fla. Dep't of Children and Families (Jan. 31, 2013).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

According to the department, providers could extend outdoor play to enhance gross motor skills or extend reading time and other already established activities to meet these requirements. As such, they would not be required to buy equipment, supplies, or materials. The change may result in the need for a provider to print a new schedule of daily activities for posting. Thus, the fiscal impact to the private sector would be negligible, if any.²¹

C. Government Sector Impact:

County governments that currently license child care facilities will be required to conform their ordinances, if they do not currently meet or exceed the new standard.

According to the Florida Office of Early Learning, FY 2012-13 program funding for Florida's School Readiness Programs totals \$574,469,783.²² Thus, the Legislature's interest in bills regulating child care facilities is not only as a regulator protecting the health, safety, and welfare of children in care, but as a purchaser of those services.

VI. Technical Deficiencies:

The bill amends only s. 402.305, F.S., relating to child care facilities. If the intent is to provide in law the same minimum standards for all children in child care settings regulated by the department, similar language would need to be added to s. 402.313(13), F.S., relating to family day care homes, and s. 402.3131(7), F.S., relating to large family child care homes.

VII. Related Issues:

None.

²¹ Dep't of Children and Family Services, *Staff Analysis and Economic Impact, SB 108* (Dec. 13, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

²² Provided as part of a data request from Senate Children, Families and Elder Affairs staff to the Office of Early Learning. Response received on Feb. 7, 2013.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Detert

28-00126-13

2013108__

1 A bill to be entitled
 2 An act relating to child care facilities; amending s.
 3 402.302, F.S.; revising a definition; amending s.
 4 402.305, F.S.; requiring the Department of Children
 5 and Families to adopt rules to include specified
 6 requirements within minimum standards relating to a
 7 written plan for the daily provision of varied
 8 activities at a child care facility; providing an
 9 effective date.

10

11 Be It Enacted by the Legislature of the State of Florida:

12

13 Section 1. Subsection (5) of section 402.302, Florida
 14 Statutes, is amended to read:

15 402.302 Definitions.—As used in this chapter, the term:

16 (5) "Department" means the Department of Children and
 17 Families ~~Family Services~~.

18 Section 2. Subsection (13) of section 402.305, Florida
 19 Statutes, is amended to read:

20 402.305 Licensing standards; child care facilities.—

21 (13) PLAN OF ACTIVITIES.—Minimum standards shall ensure
 22 that each child care facility has and implements a written plan
 23 for the daily provision of varied activities and active and
 24 quiet play opportunities appropriate to the age of the child.
 25 Minimum standards must include requirements for the appropriate
 26 use of confining equipment, periods of physical activity, and
 27 limitations on screen time, as defined in rule by the
 28 department. The written plan must include a program, to be
 29 implemented periodically for children of an appropriate age,

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

28-00126-13

2013108__

30 which will assist the children in preventing and avoiding
 31 physical and mental abuse.

32 Section 3. This act shall take effect July 1, 2013.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



The Florida Senate
Committee Agenda Request

RECEIVED

JAN 10 2013

Senate Committee
Children and Families

To: Senator Eleanor Sobel, Chair
Committee on Children, Families, and Elder Affairs

Subject: Committee Agenda Request

Date: January 10, 2013

I respectfully request that **Senate Bill #108**, relating to Child Care Facilities, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script, reading "Nancy C. Detert".

Senator Nancy C. Detert
Florida Senate, District 28

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 110

INTRODUCER: Children, Families, Elder Affairs Committee and Senator Flores

SUBJECT: Involuntary Examinations Under the Baker Act

DATE: April 15, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Hendon	CF	Fav/CS
2.			HP	
3.			JU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 110 directs the Department of Children and Families (DCF) to convene a work group to assess whether revisions are needed to part I of ch. 394, F.S., the Florida Mental Health Act, to improve the efficiency and effectiveness of its operation. A report of the DCF’s findings and recommendations is due to the President of the Senate, the Speaker of the House, and the Governor by January 1, 2014.

The bill has an effective date of July 1, 2013.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Involuntary Examination

In 1971, the Legislature created Part I of ch. 394, F.S., the “Florida Mental Health Act,” also known as the Baker Act, to address mental health needs in the state. The Baker Act is a civil commitment law which provides a process for the involuntary examination and subsequent

involuntary placement (commitment) of a person for either inpatient or outpatient treatment of a mental, emotional, or behavioral disorder.

The Department of Children and Families (DCF) administers this law through receiving facilities, which are public or private facilities that are designated by DCF to receive and hold involuntary patients under emergency conditions for psychiatric evaluation and to provide short-term treatment.¹ A patient who requires further treatment may be transported to a treatment facility. Treatment facilities designated by DCF are state-owned, state-operated, or state-supported hospitals which provide extended treatment and hospitalization beyond what is provided in a receiving facility.²

Section 394.463(1), F.S. provides that a person may be taken to a receiving facility for involuntary examination if the person is believed to be mentally ill and because of that mental illness: the person has refused voluntary examination or cannot determine for himself or herself whether examination is necessary; and, without care or treatment, the person is either likely to suffer from self-neglect, cause substantial harm to himself or herself, or be a danger to himself or herself or others.³ An involuntary examination may be initiated in one of the following ways:

- A court may enter an *ex parte* order stating a person appears to meet the criteria for involuntary examination. This order is based on sworn testimony, either written or oral.
- A law enforcement officer may take a person into custody who appears to meet the criteria for involuntary examination and transport him or her to a receiving facility for examination.
- A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she examined the person within the preceding 48 hours and the person appears to meet the criteria for involuntary examination.⁴

By its definition of the terms “physician,” “clinical psychologist,” and “psychiatric nurse,” the Baker Act limits authority to issue certificates for involuntary examinations to those practitioners who have additional experience or education related to mental disorders.⁵ Clinical social workers are required by their licensing standards to have specific experience or training related to mental disorders.⁶ The practices of mental health counseling and marriage and family therapy include using psychological methods to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders or dysfunctions.⁷

In 2011, there were 150,466 involuntary examinations initiated in the state. Law enforcement initiated almost half of the involuntary examinations (49.21 percent), followed by mental health professionals (48.73 percent), and then *ex parte* orders by judges (2.06 percent).⁸

¹ Section 394.455(26), F.S.

² Section 394.455(32), F.S.

³ Section 394.463(1), F.S.

⁴ Section 394.463, F.S.

⁵ Sections 394.455(2), (21), (23)

⁶ Section 491.003(3), F.S.

⁷ Sections 491.003(8), (9), F.S.

⁸ USF, de la Parte Florida Mental Health Institute, *Annual Report of Baker Act Data, Summary of 2011 Data*, (Jan. 2013), available at http://bakeract.fmhi.usf.edu/document/BA_Annual_2011_Final.pdf (last visited Feb. 18, 2013).

III. Effect of Proposed Changes:

Section 1 directs the DCF to convene a work group to assess whether revisions are needed to part I of ch. 394, F.S., the Florida Mental Health Act, to improve the efficiency and effectiveness of its operation. A report of the DCF's findings and recommendations is due to the President of the Senate, the Speaker of the House, and the Governor by January 1, 2014.

Section 2 provides an effective date of July 1, 2013.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on April 15, 2013

- Removes the original bill text, which authorizes physician assistants and ARNPs to initiate an involuntary examination under the Baker Act, and substitutes a study by the DCF of the Baker Act with a report due to the Legislature and Governor with recommended changes.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



893402

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2013	.	
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The Committee on Children, Families, and Elder Affairs (Sobel) recommended the following:

Senate Amendment (with title amendment)

Between lines 10 and 11
insert:

Section 1. Subsections (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31), (32), (33), (34), (35), (36), (37), and (38) of section 394.455, Florida Statutes, are renumbered as subsections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31), (32), (33), (34),



893402

13 (35), (36), (37), (38), and (39), respectively, and subsection
14 (2) is added to that section, to read:

15 394.455 Definitions.—As used in this part, unless the
16 context clearly requires otherwise, the term:

17 (2) "Advanced registered nurse practitioner" means a nurse
18 certified pursuant to s. 464.012 who has experience in the
19 diagnosis and treatment of mental and nervous disorders.

20

21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Delete line 3

24 and insert:

25 Baker Act; amending s. 394.455, F.S.; creating a
26 definition of "advanced registered nurse
27 practitioner"; amending s. 394.463, F.S.; authorizing



776476

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2013	.	
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The Committee on Children, Families, and Elder Affairs (Sobel) recommended the following:

Senate Amendment (with title amendment)

Between lines 64 and 65
insert:

Section 3. The Department of Children and Families shall convene a work group to review part I of chapter 394, the Florida Mental Health Act, to determine whether revisions are necessary to improve the efficiency and effectiveness of its operation and to recommend appropriate changes. The department shall submit a report of its findings and recommendations to the Governor, the Senate President, and the Speaker of the House by January 1, 2014.



776476

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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 7

and insert:

illness; requiring the Department of Children and
Families to study and report on recommended changes to
part I of chapter 394; providing an effective date



237656

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
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The Committee on Children, Families, and Elder Affairs
(Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. The Department of Children and Families shall convene a work group to review part I of chapter 394, the Florida Mental Health Act, to determine whether revisions are necessary to improve the efficiency and effectiveness of its operation and to recommend the appropriate changes. The department shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1,



237656

13 2014.

14 Section 2. This act shall take effect July 1, 2013.

15

16

17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 Delete everything before the enacting clause

20 and insert:

21 A bill to be entitled

22 An act relating to the Florida Mental Health Act;

23 requiring the Department of Children and Families to

24 study and report on recommended changes to part I of

25 chapter 394; providing an effective date.

By Senator Flores

37-00260-13

2013110__

A bill to be entitled

An act relating to involuntary examinations under the Baker Act; amending s. 394.463, F.S.; authorizing physician assistants and advanced registered nurse practitioners to initiate involuntary examinations under the Baker Act of persons believed to have mental illness; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to the nearest receiving facility for involuntary examination. The order of the court shall be made a part of the patient's clinical record. No fee shall be charged for the filing of an order under this subsection. Any receiving facility accepting the patient based on this order must send a copy of

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

37-00260-13

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the order to the Agency for Health Care Administration on the next working day. The order shall be valid only until executed or, if not executed, for the period specified in the order itself. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this report must send a copy of the report to the Agency for Health Care Administration on the next working day.

3. A physician, physician assistant, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, ~~or~~ clinical social worker, or advanced registered nurse practitioner may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the nearest receiving facility for involuntary examination. The law enforcement officer shall execute a written report detailing

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

37-00260-13

2013110_

59 the circumstances under which the person was taken into custody.
60 The report and certificate shall be made a part of the patient's
61 clinical record. Any receiving facility accepting the patient
62 based on this certificate must send a copy of the certificate to
63 the Agency for Health Care Administration on the next working
64 day.

65 Section 2. This act shall take effect July 1, 2013.



The Florida Senate

Committee Agenda Request

To: Senator Eleanor Sobel, Chair
Committee on Children, Families, and Elder Affairs

Subject: Committee Agenda Request

Date: March 13, 2013

I respectfully request that **Senate Bill #110**, relating to Involuntary Examinations Under the Baker Act, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

RECEIVED

MAR 13 2013

Senate Committee
Children and Families



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Communications, Energy, and Public Utilities, *Chair*
Appropriations Subcommittee on Health
and Human Services, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Ethics and Elections
Health Policy
Regulated Industries

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR ANITERE FLORES

37th District

April 15, 2013

Honorable Eleanor Sobel
Chair of the Committee on Children, Families and Elder Affairs
410 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairwoman Sobel:

I respectfully request Senator Denise Grimsley present Senate Bill 110 to the Committee on Children, Families and Elder Affairs.

Please do not hesitate to contact me should you have any questions.

Sincerely,


Anitere Flores

CC: Mr. Claude Hendon, Staff Director, Committee on Children, Families and Elder Affairs.

RECEIVED

APR 15 2013

Senate Committee
Children and Families

REPLY TO:

- 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
- 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic Baker Act Bill Number 5B118
Name Stan Whitaker Amendment Barcode _____
Job Title Chairman Florida Assocate Nurses
Address 6294 NW Torreyark Rd Phone 850-545-930
Bristol FL 32821 E-mail _____
City State Zip

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4 15 13

Meeting Date _____

Topic BAKER ACTS Bill Number 110
Name DAN B HENDRICKSON Amendment Barcode _____
Job Title ASST PUBLIC DEFENDER, 2D CIRCUIT
Address 301 S MONROE ST 4TH FLR N Phone 850 606-1037
TALLAHASSEE FL 32301 E-mail DAN.HENDRICKSON@FLPD2.COM
City State Zip

Speaking: For Against Information

Representing FL PUBLIC DEFENDERS ASSN

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic Baker Act Bill Number 110
Name Kung, Mai Amendment Barcode _____
Job Title Faculty (if applicable)
Address 3712 Longchamp Cir Phone _____
Street City State Zip
Tallahassee FL E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04/15/13
Meeting Date

Topic SB 110 Baker Act Bill Number SB 110
Name Kirstyn Smith Amendment Barcode _____
Job Title Student Nurse FSU (if applicable)
Address 800 Basin St 1-405 Phone 1271986038
Street City State Zip
Tallahassee FL 32304 E-mail KAS10@my.fsu.edu

Speaking: For Against Information

Representing Rep Campbell

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 312

INTRODUCER: Senator Braynon

SUBJECT: Family Support Personnel Policies

DATE: April 12, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Pre-meeting
2.			GO	
3.			AGG	
4.			AP	
5.				
6.				

I. Summary:

SB 312 amends s. 110.1522, F.S., relating to a model rule establishing family support personnel policies, to require that the model rule promulgated by the Department of Management Services (DMS or agency) entitle certain state employees to take up to 12 months of leave in order to care for a family member with a serious health condition. The model rule that had been promulgated by DMS when this statutory provision was first enacted in 1991 was repealed on January 1, 2002.

In addition the bill requires the term “serious health condition” be defined pursuant to the federal Family and Medical Leave Act (FMLA) and its implementing regulations.

The bill is anticipated to have an indeterminate fiscal impact on state government and provides an effective date of July 1, 2013.

This bill substantially amends section 110.1522 of the Florida Statutes.

II. Present Situation:

Florida State Personnel System

DMS has jurisdiction over the personnel policies of the State Personnel System (SPS). It is the largest of the state’s employment systems, but does not include employees of the Florida Lottery,

the Legislature, the State Courts System, the Justice Administration System, or the State University System.¹

In 1991, the Legislature directed the Department of Management Services to develop a model rule for all executive branch agencies excluding the state universities to establish family support personnel policies.² “Family support personnel policies” means personnel policies affecting an employee’s ability to both work and devote care and attention to their families and includes policies on flexible hour work schedules, compressed time, job sharing, part-time employment, maternity or paternity leave for employees with a newborn or newly adopted child, and paid and unpaid family or administrative leave for family responsibilities.³

The model rule that had been promulgated by DMS when this statutory provision was first enacted in 1991 was repealed on January 1, 2002.⁴ Currently, DMS administers its family supportive workplace policies through administrative rule that applies exclusively to employees of the SPS.⁵ Since 1979, the family and parental leave policies of the SPS have also been governed by section 110.221, F.S., which currently provides up to six months of protected family medical leave for employees to care for a family member.⁶

Family and Medical Leave Act (FMLA)

In 1993, the federal Family and Medical Leave Act was enacted that entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. Covered employers and eligible employees include the following:

- **Covered employers**
 - Private-sector employer, with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer;
 - Public agency, including a local, state, or federal government agency, regardless of the number of employees it employs; or
 - Public or private elementary or secondary school, regardless of the number of employees it employs.

- **Eligible employees**
 - Works for a covered employer;
 - Has worked for the employer for at least 12 months;
 - Has at least 1,250 hours of service for the employer during the 12 month period immediately preceding the leave; and
 - Works at a location where the employer has at least 50 employees within 75 miles.⁷

¹ Section 110.1522, F.S.

² Chapter 91-184, Laws of Fla.

³ Section 110.1522, F.S.

⁴ Rule 60L-23, F.A.C.

⁵ Rule 60L-34.0051, F.A.C.

⁶ Chapter 79-190, Laws of Fla. (known as the Family Supportive Work Program (FSWP) leave).

⁷ U.S. Department of Labor, Wage and Hour Division, Family and Medical Leave Act, *available at* <http://www.dol.gov/whd/regs/compliance/whdfs28.pdf> (last visited April 10, 2013).

Eligible employees may take up to 12 work weeks of leave in a 12-month period for one or more of the following reasons:

- The birth of a child or placement of a child with the employee for adoption or foster care;
- To care for a spouse, son, daughter, or parent who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- For any qualifying urgent circumstance arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or is called to covered active duty status.⁸

Under some circumstances, employees may take FMLA leave on an intermittent or reduced schedule basis. That means an employee may take leave in separate blocks of time or by reducing the time he or she works each day or week for a single qualifying reason. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations. If FMLA leave is for the birth, adoption, or foster placement of a child, use of intermittent or reduced schedule leave requires the employer's approval.⁹

Under certain conditions, employees may choose, or employers may require employees, to "substitute" (run concurrently) accrued paid leave, such as sick or vacation leave, to cover some or all of the FMLA leave period. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.¹⁰

An employer may require the employee to submit a certification from a health care provider to support the employee's need for FMLA leave to care for a covered family member with a serious health condition or for the employee's own serious health condition. The employer may not request a certification for leave to bond with a newborn child or a child placed for adoption or foster care.¹¹

Duplicative or Conflicting Provisions

Although the FMLA only provides 12 weeks per 12-month period, it applies to employees as well as their family members and covers a wide range of medical conditions. While state government employers who are not governed by section 110.221, F.S., have the flexibility to align their family medical leave policies with the new federal law, the SPS is required to administer the overlapping provisions of section 110.221, F.S. and the FMLA. This requirement has complicated administration of leave provisions, which may be redundant or incompatible. Examples of duplicative or conflicting criteria that only SPS agencies must administer:¹²

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ U.S. Department of Labor, Wage and Hour Division, Certification of a Serious Health Condition under the Family and Medical Leave Act, available at <http://www.dol.gov/whd/regs/compliance/whdfs28g.htm> (last visited April 10, 2013).

¹² It is not known how SPS agencies resolve these inconsistencies.

- FMLA leave eligibility requires 12 months of aggregated service and a minimum of 1,250 hours worked in the previous 12 months; whereas agencies must allow FSWP leave from the moment of hire;
- FMLA leave entitles eligible employees to 12 weeks of leave per 12-month period, whereas FSWP leave applies per qualified event with no specified cap;
- FMLA leave must include persons who stand or once stood in loco parentis (i.e., holds certain parental responsibilities, regardless of biological/legal relationship) and foster children, legal wards, or children for whom the employee stands in loco parentis, whereas FSWP leave is limited to certain family members (a child, parent, or current spouse);
- FMLA provides 26 weeks (6 six months) of protected leave to care for any family member in the military who has a serious service-connected injury or illness and for whom the employee has been designated “next of kin”, whereas FSWP leave only applies if the service member is the child, parent, or current spouse;
- FMLA allows intermittent leave use, whereas FSWP contemplates one contiguous period;
- FMLA allows employers to require substitution of accrued leave, whereas FSWP provides that eligible employees cannot be denied leave without pay.
- Other state government employers (Florida Lottery, State Courts System, Justice Administration System, state universities, etc.) are not obligated to comply with any FSWP leave provisions, and have the discretion to administer parental and family medical leave solely on the basis of FMLA. This has resulted in inconsistent practices across state government.¹³

III. Effect of Proposed Changes:

Section 1 of the bill requires that the model rule promulgated by the Department of Management Services be amended to entitle certain state employees to take up to 12 months of leave in order to care for a family member with a serious health condition. In addition the bill requires the term “serious health condition” be defined pursuant to the federal Family and Medical Leave Act and its implementing regulations.

Section 2 of the bill provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ Department of Management Services, *Bill Analysis 2013, SB 312* (February 8, 2013) (on file with the Senate Committee on Children, Families and Elder Affairs).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The agency also reports that by extending eligibility for family medical leave for up to one year, the operational needs of agencies could be negatively impacted by staffing shortages of up to one year, over which they would not have any control. The proposed provision would also require additional administrative oversight at the agency level to ensure proper leave tracking and to prevent possible abuse.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

DMS has reported that if the amendment to section 110.1522, F.S., proposed by the bill is enacted, the agency would need to promulgate a rule that incorporates the provisions of both state and federal laws, in order to fully integrate the proposed family medical leave policies with the FSWP parental leave policies of the current law and the parental and family medical leave policies of the federal FMLA. This may also increase the state's overall liability for family medical leave benefits.¹⁵

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁴ *Id.*

¹⁵ *Id.*

By Senator Braynon

36-00589-13

2013312__

1 A bill to be entitled

2 An act relating to family support personnel policies;
3 amending s. 110.1522, F.S.; requiring the model rule
4 establishing family support personnel policies to
5 provide for a specified amount of leave for an
6 employee who has a family member with a serious health
7 condition; providing an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Section 110.1522, Florida Statutes, is amended
12 to read:

13 110.1522 Model rule establishing family support personnel
14 policies.-The Department of Management Services shall develop a
15 model rule establishing family support personnel policies for
16 all executive branch agencies, excluding the State University
17 System. "Family support personnel policies," for purposes of ss.
18 110.1521-110.1523, means personnel policies affecting employees'
19 ability to both work and devote care and attention to their
20 families and includes policies on flexible hour work schedules,
21 compressed time, job sharing, part-time employment, maternity or
22 paternity leave for employees with a newborn or newly adopted
23 child, and paid and unpaid family or administrative leave for
24 family responsibilities. The model rule must provide for the
25 granting of leave for up to 12 months for an employee who has a
26 family member with a serious health condition as defined by the
27 Family and Medical Leave Act and its implementing regulations.

28 Section 2. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Regulated Industries, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Health Policy

SENATOR OSCAR BRAYNON II

Democratic Whip
36th District

February 20, 2013

Senator Eleanor Sobel, Chair
Children, Families and Elder Affairs
410 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Sobel:

This letter is to request that **Senate Bill # 312**, relating to *Family Support Personnel Policies* be placed on the agenda of the next scheduled meeting of the committee.

SB 312 Requiring the model rule establishing family support personnel policies to provide for a specified amount of leave for an employee who has a family member with a serious health condition, etc.

Thank you for consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Oscar Braynon II".

Senator Braynon
District 36

cc. *Claude Hendon, Staff Director,*
Lynn Wells, Committee Administrative Assistant, Room 520K

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FEB 22 2013

Senate Committee
Children and Families

REPLY TO:

- 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
- 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 590

INTRODUCER: Senator Joyner

SUBJECT: Fees and Costs Incurred in Guardianship Proceedings

DATE: April 11, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Favorable
2.	Preston	Hendon	CF	Favorable
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

SB 590 revises various provisions relating to Florida’s guardianship law. The bill:

- Allows courts, without the admission of expert witness testimony, to determine reasonable compensation for the guardian, guardian’s attorney, a person employed by the guardian, or an attorney appointed to represent an alleged incapacitated person. However, expert testimony may be offered at the option of a person or party after giving notice to interested persons. If expert testimony is offered, a reasonable expert witness fee must be awarded by the court and paid from the assets of the ward.
- Grants the court discretion to appoint a guardian ad litem in any case in which a minor has a claim or settlement that exceeds \$15,000, if it is necessary to protect the interests of the minor.
- Makes any settlement of a claim of a minor that exceeds \$15,000 subject to the confidentiality provisions of Florida Guardianship Law.¹
- Requires that the fees of a guardianship examining committee be paid upon court order as expert witness fees under s. 29.004(6), F.S., if the petition alleging incapacity is dismissed Section 29.004(6), F.S., authorizes courts to pay the fees of court-appointed experts from funds appropriated by the Legislature.
- Requires a petitioner found by a court to have filed a guardianship proceeding in bad faith to reimburse the state courts system for any amounts paid by a court to a committee.

¹ Chapter 744, F.S.

The bill is anticipated to have an insignificant fiscal impact on state government and has an effective date of upon becoming law. The provisions of the bill shall apply to all proceedings pending on that date.

This bill substantially amends the following sections of the Florida Statutes: 744.108, 744.3025, and 744.331.

II. Present Situation:

Guardianship

Guardianships serve as a mechanism to protect vulnerable individuals in our society who do not have a family or loved one who is willing and able to manage their property or other personal matters. A guardian may be a court-appointed, surrogate decision-maker who makes personal or financial decisions for a minor or for an adult with mental or physical disabilities. A guardian may be described as a person “who has the legal authority and duty to care for another’s person or property, esp[ecially] because of the other’s infancy, incapacity, or disability.”² Guardianships are governed completely and exclusively under statutes in Florida.³

Any adult may petition a court to initiate guardianship proceedings to determine the incapacity of any person.⁴ An “incapacitated person” is a “person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person.”⁵

A guardian is a surrogate decision-maker appointed by the court to make personal or financial decisions for a minor or an adult having mental or physical disabilities.⁶ Under Florida law, a ward is defined as a person for whom a guardian has been appointed.⁷

The procedure to determine an alleged person’s incapacity is prescribed by statute.⁸ Any person may file, under oath, a petition in circuit court for determination of incapacity alleging that a person is incapacitated.⁹ After a petition for determination of incapacity has been filed, a court must appoint an examining committee comprised of three health care professionals to examine and report the condition of the alleged incapacitated person.¹⁰ If the examining committee determines that the alleged incapacitated person is not incapacitated, the court must dismiss the petition for determination of incapacity.¹¹ If the examining committee determines that the alleged incapacitated person is incapacitated, the court must hold a hearing on the petition. If after a hearing, the court determines that a person is incapacitated, the court must also find that

² BLACK’S LAW DICTIONARY (9th ed. 2009).

³ *Poling v. City Bank & Trust Co. of St. Petersburg*, 189 So. 2d 176, 182 (Fla 2d DCA 1966).

⁴ Section 744.3201, F.S.

⁵ Section 744.102(12), F.S.

⁶ *See e.g.*, s. 744.102(9), F.S.

⁷ Section 744.102(22), F.S.

⁸ Section 744.331, F.S.

⁹ *Id.* In Florida, circuit courts have exclusive jurisdiction of proceedings relating to the determination of incompetency. Section 26.012(2)(b), F.S.

¹⁰ Section 744.331(3), F.S.

¹¹ Section 744.331(4), F.S.

alternatives to guardianship were considered and that no alternatives to guardianship will sufficiently address the problems of the incapacitated person and appoint a guardian.¹²

Attorney Fees and Costs Associated with Guardianship Administration

Section 744.108, F.S., outlines requirements for awarding of compensation to a guardian or attorney in connection with a guardianship. “A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward’s behalf, is entitled to a reasonable fee for services rendered and reimbursement of costs incurred on behalf of the ward.”¹³ Similarly, s. 744.311(7), F.S., provides that any attorney appointed under s. 744.311(2), F.S., is entitled to a reasonable fee to be determined by the court.

Fees and costs incurred in determining compensation are part of the guardianship administration and are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable.¹⁴ The statute does not specifically address whether an attorney who has rendered services to a ward, a court-appointed counsel for the ward, is entitled to recover attorney fees and costs associated with proceedings to review and determine compensation.¹⁵

Additionally, it is unclear whether expert testimony is required to establish a reasonable fee for a guardian or an attorney. Section 744.108, is silent on the subject.¹⁶ Practitioners report that many attorneys and judges interpret the current law as requiring testimony from an expert witness to establish a reasonable attorney fee unless a statute dispenses with that requirement.¹⁷

Cost considerations are a significant factor in many guardianships.¹⁸ The requirement for expert testimony to be rendered at every hearing for a determination of interim guardian’s fees or attorney fees adds a layer of costs that depletes the ward’s estate.¹⁹ Practitioners report that the judiciary is capable of determining a reasonable fee without expert testimony in the vast majority of cases.²⁰

Settlements

Florida’s public policy favors settlement.²¹ A settlement agreement is a contract.²² As a contract between bargaining parties, “[s]ettlements are highly favored and will be enforced whenever

¹² See s. 744.331(6)(b), F.S.

¹³ Section 744.108(1), F.S.

¹⁴ Section 744.108(8), F.S.

¹⁵ Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: Proposed Revisions to Section 744.108, F.S., Relating to Expert Testimony in Determining Attorney Fees and Guardian’s Fees*. (2013) (on file with the Senate Committee on Judiciary).

¹⁶ *Id.*

¹⁷ *Id.* (citing *Shwartz, Gold & Cohen, P.A. v. Streicher*, 549 So. 2d 1044 (Fla. 4th DCA 1989); *In re Estate of Cordiner v. Evans*, 497 So. 2d 920 (Fla. 2d DCA 1986); *Clark v. Squire, Sanders & Dempsey*, 495 So. 2d 264 (Fla. 3d DCA 1986).

¹⁸ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* at note 16.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Saleeby v. Rocky Elson Construction, Inc.*, 3 So. 3d 1078 (Fla. 2009).

²² *Lazzaro v. Miller & Solomon General Contractors, Inc.*, 48 So. 3d 974 (Fla. 4th DCA 2010).

possible.”²³ Generally, an adult who has not been found to lack capacity or any entity may settle a legal claim and may keep the settlement confidential. In situations where parties settle their disputes based on a filed civil action, generally, the agreement is not required to be filed with the court, and therefore does not become a public record.²⁴ In contrast, a *minor or ward under a guardianship* may not bring or settle a personal injury claim or other legal action without court approval.²⁵ If a minor or incapacitated person has a guardian or other legal representative, that guardian or legal representative may sue or defend any legal action.²⁶ If the minor needs a guardian of the person, the guardian will be appointed as a plenary guardian without an adjudication of incapacity.²⁷ A minor’s parent or guardian ad litem may bring an action on behalf of the minor, depending on the amount of the claim.²⁸ On behalf of a ward, a natural guardian may settle and consummate any settlement claim or cause of action that does not exceed \$15,000.²⁹ Section 744.387(3)(a), F.S., provides that:

[n]o settlement after an action has been commenced by or on behalf of a [minor] ward shall be effective unless approved by the court having jurisdiction of the action.³⁰

A court may disapprove a settlement if it finds that it is not in the best interests of the minor. Under s. 744.3025, F.S., the guardian of a minor who is negotiating a settlement in excess of \$15,000 with other parties must appear first before the court and obtain the court’s approval of the settlement. Under s. 744.3025(1)(b), F.S., the courts are required to appoint a guardian ad litem for settlements exceeding \$50,000; unless a guardian ad litem having no potential interest adverse to the minor has previously been appointed. The duty of the guardian is to protect the minor’s interests as described in the Florida Probate Rules.³¹

Examining Committee

Within 5 days after a petition for determination of incapacity has been filed, a court must appoint a three-member examining committee.³² One member must be a psychiatrist or other physician. The remaining members must be either a psychologist; gerontologist; another psychiatrist or other physician; a registered nurse; nurse practitioner; licensed social worker; a person with an advanced degree in gerontology from an accredited institution of higher education; or other person who by knowledge, skill, experience, training, or education may, in the court’s discretion, advise the court in the form of an expert opinion.³³ One of the members of the committee must

²³ *Hanson v. Maxfield*, 23 So. 3d 736, 739 (1st DCA 2009) (quoting *Robbie v. City of Miami*, 469 So. 2d 1384, 1385 (Fla. 1985)).

²⁴ Correspondence with attorneys in the Real Property, Probate, and Trust Law Section of The Florida Bar. *Also see*, Rule 1.442(d) Fla. R.Civ.P. (“A proposal shall be served on the party or parties to whom it is made but shall not be filed unless necessary to enforce the provisions of this rule.”)

²⁵ Sections 744.301 and 744.387(2), F.S.

²⁶ Henry P. Trawick Jr., *Trawick’s Florida Practice and Procedure*, s. 4:5 (2007 edition).

²⁷ Section 744.361(1), F.S.

²⁸ Sections 744.301 and 744.387(2), F.S.

²⁹ Sections 744.387(2) and (3), F.S.

³⁰ See also s. 768.23 and s. 768.25.

³¹ Section 744.3025(1)(d), F.S.

³² Section 744.331(3)(a), F.S.

³³ *Id.*

have knowledge of the type of incapacity alleged in the petition.³⁴ The clerk of the court must send notice of appointment to each person appointed to the examining committee no later than 3 days after the court's appointment.³⁵ Examining committee members must also complete 4 hours of initial training and 2 hours of continuing education during each 2-year period after the initial training.³⁶

The written report of each member of the examining committee is "an essential element, but not necessarily the only element used [by a court] in making a capacity or guardianship decision."³⁷ Each committee member's written report must among other items include an evaluation of the alleged incapacitated person's ability to retain his or her rights.³⁸

Each member of the examining committee must examine the person and determine the alleged incapacitated person's ability to exercise rights specified in s. 744.3215, F.S.³⁹

Rights that may be removed from a person by an order determining incapacity but not delegated to a guardian include the right:

- To vote.
- To personally apply for governmental benefits.
- To have a driver's license.
- To travel.
- To seek or retain employment.⁴⁰

Because the law presumes one has capacity, the guardian of the person may exercise only those rights which have been removed by a court.⁴¹ Rights that may be removed from a person by an order determining incapacity and which may be delegated to the guardian include the right:

- To contract.
- To sue and defend lawsuits.
- To apply for governmental benefits.
- To manage property or to make any gift or disposition of property.
- To determine his or her residence.
- To consent to medical and mental health treatment.
- To make decisions about his or her social environment or other social aspects of his or her life.⁴²

³⁴ *Id*

³⁵ *Id.*

³⁶ Section 744.331(3)(d), F.S.

³⁷ Section 744.331(3)(f), F.S.

³⁸ Section 744.331(3)(g), F.S. Such rights include " the rights to marry; vote; contract; manage or dispose of property; have a driver's license; determine his or her residence; consent to medical treatment; and make decisions affecting her or his social environment." *Id.*

³⁹ Section 744.331(3)(e), F.S.

⁴⁰ Section 744.3215(2), F.S.

⁴¹ See s. 744.3215(3), F.S.

⁴² Section 744.3215(3), F.S.

Section 744.3215(4), F.S., also outlines certain rights that may not be delegated to a guardian without first obtaining specific authority from a court.

The written report of each member of the examining committee must also describe any matters “with respect to which the person lacks the capacity to exercise rights, the extent of that incapacity, and the factual basis for the determination that the person lacks that capacity.”⁴³ Additionally, there is no right to an evidentiary hearing to challenge the opinions of the examining committee findings when the committee has concluded that the subject of the incapacity hearing is not incapacitated.⁴⁴ A copy of each committee member’s report must be served on the petitioner and the attorney for the alleged incapacitated person within 3 days after the report is filed with the court.⁴⁵

In construing the provisions regarding the examining committee’s reports, Florida district courts of appeal have held that trial courts need only consider the reports of the examining committee.⁴⁶ If a majority of the examining committee members conclude that the alleged incapacitated person is not incapacitated, the court must dismiss the petition.⁴⁷ Florida courts have held that “where a statute prescribes a certain method of [determining a person’s competency], the statute must be strictly followed.”⁴⁸

Section 744.331(7), F.S., states that the examining committee and any attorney appointed to represent the person who is facing an incapacity petition is entitled to reasonable fees to be determined by the court.⁴⁹ Section 744.331(7)(b), F.S., provides that the examining committee fees are paid from the property of the incapacitated ward or if the ward is indigent from the state. If the alleged incapacitated person, who is subject to the examination pursuant to a petition for incapacity, is found to have capacity or the petition is dismissed, it is unclear which party is responsible for the payment of the examining committee fees.⁵⁰ Section 744.331(7)(c), F.S., specifies that if the court finds the petition to have been filed in bad faith, the court may, in its discretion assess court costs and attorney fees against the petitioner.

⁴³ Section 744.331(3)(g)4., F.S.

⁴⁴ *Levine v. Levine*, 4 So. 3d 730, 731 (Fla. 5th DCA 2009).

⁴⁵ Section 744.331(3)(h), F.S.

⁴⁶ See *Rothman v. Rothman*, 93 So. 3d 1052, 1054 (Fla. 4th DCA) (citing *Faulkner v. Faulkner*, 65 So. 3d 1167, 1168 (Fla. 1st DCA 2011) (“If the majority of the committee determines that the alleged incapacitated person is not incapacitated, the court must dismiss the petition to determine incapacity.”); *Levine v. Levine*, 4 So. 3d 730, 731 (Fla. 5th DCA 2009) (rejecting a request for an evidentiary hearing to challenge the opinion of the examining committee); and *Mathes v. Huelsman*, 743 So. 2d 626, 627 (Fla. 2d DCA 1999) (“[O]nce the examining committee concluded that Mathes [the alleged incapacitated person] had full capacity, the trial court should have dismissed the petition to determine incapacity and the petition for appointment of a guardian.”).

⁴⁷ Section 744.331(4), F.S.

⁴⁸ *Rothman* 93 So. 3d 1052, 1054 (Fla. 4th DCA 2012). See also *In re Keene*, 343 So. 2d 916 (Fla. 4th DCA 1977).

⁴⁹ See also s. 744.108(1), F.S., which provides that “a guardian, or an attorney who has rendered services to the ward or to the guardian on the ward’s behalf, is entitled to a reasonable fee for services rendered and reimbursement of costs incurred on behalf of the ward.” Section 744.108(8), F.S., states that “[w]hen court proceedings are instituted to review or determine a guardian’s or an attorney’s fees under subsection (2), such proceedings are part of the guardianship administration process and the costs, including fees for the guardian’s attorney, shall be determined by the court and paid from the assets of the guardianship estate unless the court finds the requested compensation under subsection (2) to be substantially unreasonable.

⁵⁰ See section 744.331(7), F.S.

Courts acknowledge that a gap exists in s.744.331(7), F.S., as to who should be responsible for payment of the examining committee fees where the guardianship petition is dismissed or denied.⁵¹ Many courts are already using another funding source to address the issue and it is also unknown how many proceedings result in a dismissal of the guardianship petition.⁵² Court-appointed attorney fees and examining committee fees are paid from a ward's assets unless the ward is indigent or a party is found to have bad faith in bringing the petition to determine incapacity.⁵³ There is anecdotal information that the number of guardianship petitions that are dismissed is relatively small.⁵⁴ Some legal scholars argue that the examining committee should be paid from expert witness fees under s. 29.004(6), F.S., which awards fees to court appointed experts.⁵⁵

III. Effect of Proposed Changes:

Attorney Fees and Costs Associated with Guardianship Administration

The bill amends s. 744.108, F.S., to allow courts to determine reasonable compensation for the guardian, guardian's attorney, a person employed by the guardian, or an attorney appointed to represent an alleged incapacitated person without the assistance of expert testimony.⁵⁶ However, expert testimony may be offered by any person or party after giving notice to interested persons. If expert testimony is offered, a reasonable expert witness fee must be awarded by the court and paid from the assets of the ward.⁵⁷

Claims of Minors

The bill amends s. 744.3025(1), F.S., to grant the court discretion to appoint a guardian ad litem in any case in which a minor has a claim or settlement that exceeds \$15,000.

The bill additionally provides that any settlement of a claim of a minor that exceeds \$15,000 is subject to the confidentiality provisions of ch. 744, F.S.⁵⁸

⁵¹ *Faulkner v. Faulkner*, 65 So.3d 1167, 1169 (Fla. 1st DCA 2011) (citing *Ehrlich v. Severson*, 985 So. 2d 639, 640 (Fla. 4th DCA 2008); and *Levine v. Levine*, 4 So. 3d 730, 731 (Fla. 5th DCA 2009)).

⁵² Office of the State Courts Administrator, *2013 Judicial Impact Statement, SB 590* (Mar. 12, 2013) (on file with the Senate Committee on Judiciary).

⁵³ Section 744.331(7), F.S.

⁵⁴ Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper on Proposed Revisions to Section 744.337(7), F.S., Relating to Compensation of the Examining Committee in Incapacity Proceedings*, (2013).

⁵⁵ *Id.*

⁵⁶ An attorney appointed under s. 744.331(2), F.S.

⁵⁷ This provision is derived from and similar to s. 733.6175(4), F.S., which reads: "The court may determine reasonable compensation for the personal representative or any person employed by the personal representative without receiving expert testimony. Any party may offer expert testimony after notice to interested persons. If expert testimony is offered, a reasonable expert witness fee shall be awarded by the court and paid from the assets of the estate. The court shall direct from what part of the estate the fee shall be paid."

⁵⁸ The effect of this provision may not be clear because no provision exists in ch. 744, F.S., which provides for the confidentiality of a settlement of a minor. Senate Bill 590 appears to be related to SB 610, which would create a public records exemption for certain court records relating to the settlement of a ward's or minor's claim.

Fees of the Examining Committee

The bill provides that the fees of the examining committee shall be paid upon court order as expert witness fees under s. 29.004(6), F.S. Section 29.004(6), F.S., authorizes a court to pay court-appointed experts from funds appropriated by the Legislature. Additionally, the bill provides that if the court finds that a petitioner has filed a guardianship proceeding in bad faith, the petitioners must reimburse the state courts system for any amounts paid by court for the committee through the expert witness fees.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The costs to guardianship estates may be reduced to the extent that fees may be determined by a court without the admission of expert witness testimony for the guardian, the guardian's attorneys, persons employed by the guardian, or an appointed attorney.

C. Government Sector Impact:

The Office of the State Courts Administrator completed a judicial impact statement for the bill. The office estimates that the bill will have a fiscal impact for the payment by the state courts system of examining committee fees for non-indigent wards upon the dismissal of a proceeding to determine incapacity. Due to the lack of data on the number of such dismissals the actual fiscal impact is not known.⁵⁹ The Office of the State Courts Administrator, however, does not expect the fiscal impact from the legislation to be significant.

⁵⁹ Office of the State Courts Administrator, *2013 Judicial Impact Statement, SB 590* (Mar. 12, 2013) *supra* at note 52.

The Office of the State Courts Administrator reports that any new requirement to pay expenses from the due process funds of the state courts system, absent an increase in due process appropriations, could place additional pressure on the availability of such funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Joyner

19-00227A-13

2013590__

1 A bill to be entitled
 2 An act relating to fees and costs incurred in
 3 guardianship proceedings; amending s. 744.108, F.S.;
 4 providing that fees and costs incurred by an attorney
 5 who has rendered services to a ward in compensation
 6 proceedings are payable from guardianship assets;
 7 providing that expert testimony is unnecessary in
 8 proceedings to determine compensation for an attorney
 9 or guardian; amending s. 744.3025, F.S.; providing
 10 that a court may appoint a guardian ad litem to a
 11 minor if necessary to protect the minor's interests in
 12 a settlement; providing that a settlement of a minor's
 13 claim is subject to certain confidentiality
 14 provisions; amending s. 744.331, F.S.; directing that
 15 the examining committee be paid from state funds as
 16 court-appointed expert witnesses if a petition for
 17 incapacity is dismissed; requiring that a petitioner
 18 reimburse the state for expert witness fees if the
 19 court finds the petition to have been filed in bad
 20 faith; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Subsection (8) of section 744.108, Florida
 25 Statutes, is amended, and subsection (9) is added to that
 26 section, to read:

27 744.108 Guardian's and attorney's fees and expenses.—

28 (8) When court proceedings are instituted to review or
 29 determine a guardian's or an attorney's fees under subsection

19-00227A-13

2013590__

30 (2), such proceedings are part of the guardianship
 31 administration process and the costs, including costs and
 32 attorney fees for the guardian's attorney, an attorney appointed
 33 under subsection (2) of s. 744.331, or an attorney who rendered
 34 services to the ward, shall be determined by the court and paid
 35 from the assets of the guardianship estate unless the court
 36 finds the requested compensation under subsection (2) to be
 37 substantially unreasonable.

38 (9) The court may determine reasonable compensation for the
 39 guardian, the guardian's attorney, a person employed by the
 40 guardian, an attorney appointed under subsection (2) of s.
 41 744.331, or an attorney who has rendered services to the ward
 42 without receiving expert testimony. Any person or party may
 43 offer expert testimony after giving notice to interested
 44 persons. If expert testimony is offered, a reasonable expert
 45 witness fee shall be awarded by the court and paid from the
 46 assets of the guardianship estate.

47 Section 2. Section 744.3025, Florida Statutes, is amended
 48 to read:

49 744.3025 Claims of minors.—

50 (1) (a) The court may appoint a guardian ad litem to
 51 represent the minor's interest before approving a settlement of
 52 the minor's portion of the claim in any case in which a minor
 53 has a claim for personal injury, property damage, wrongful
 54 death, or other cause of action in which the gross settlement of
 55 the claim exceeds \$15,000 if the court believes a guardian ad
 56 litem is necessary to protect the interests of the minor.

57 (b) Except as provided in paragraph (e), the court shall
 58 appoint a guardian ad litem to represent the minor's interest

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59 before approving a settlement of the minor's claim in any case
60 in which the gross settlement involving a minor equals or
61 exceeds \$50,000.

62 (c) The appointment of the guardian ad litem must be
63 without the necessity of bond or notice.

64 (d) The duty of the guardian ad litem is to protect the
65 minor's interests as described in the Florida Probate Rules.

66 (e) A court need not appoint a guardian ad litem for the
67 minor if a guardian of the minor has previously been appointed
68 and that guardian has no potential adverse interest to the
69 minor. ~~A court may appoint a guardian ad litem if the court
70 believes a guardian ad litem is necessary to protect the
71 interests of the minor.~~

72 (2) Unless waived, the court shall award reasonable fees
73 and costs to the guardian ad litem to be paid out of the gross
74 proceeds of the settlement.

75 (3) Any settlement of a claim pursuant to this section is
76 subject to the confidentiality provisions of this chapter.

77 Section 3. Paragraph (c) of subsection (7) of section
78 744.331, Florida Statutes, is amended to read:

79 744.331 Procedures to determine incapacity.—

80 (7) FEES.—

81 (c) If the petition is dismissed:—

82 1. The fees of the examining committee shall be paid upon
83 court order as expert witness fees under s. 29.004(6).

84 2. Costs and ~~attorney~~ ~~attorney's~~ fees of the proceeding may
85 be assessed against the petitioner if the court finds the
86 petition to have been filed in bad faith. ~~If the court finds bad~~
87 faith under this subparagraph, the petitioner shall reimburse

19-00227A-13 2013590

88 the state courts system for any amounts paid under subparagraph
89 1.

90 Section 4. This act shall take effect upon becoming law and
91 shall apply to all proceedings pending on that date.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on General
Government
Ethics and Elections
Health Policy
Judiciary
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR ARTHENIA L. JOYNER
19th District

April 8, 2013

Senator Eleanor Sobel, Chair
Senate Committee on Children, Families, and Elder Affairs
520 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Madame Chair:

This is to request that Senate Bill 590, Fees and Costs Incurred in Guardianship Proceedings, be placed on the agenda for the Committee on Children Families and Elder Affairs. This bill needs to be linked to the public records exemption companion, SB 610, in this committee. Your consideration of this request to palce both bills on the next Agenda is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

RECEIVED

APR 09 2013

Senate Committee
Children and Families

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on General
Government
Ethics and Elections
Health Policy
Judiciary
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR ARTHENIA L. JOYNER
19th District

April 15, 2013

Senator Eleanor Sobel, Chair
Senate Committee on Children, Families, and Elder Affairs
520 Knott
Tallahassee, FL 32399

Dear Madame Chair:

This is to request that my Legislative Assistant, Randi Rosete, be permitted to present Senate Bill 590 related to guardianship and the companion public records exemption bill, SB 610, to the Committee on Children, Families, and Elder Affairs on April 15. Allowing my assistant to present this bill will be greatly appreciated since I will not be able to personally present it due to maintaining quorum in the Committee on Judiciary.

Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthenia L. Joyner".

Arthenia L. Joyner
Senator, District 19

ALJ/rr

RECEIVED

APR 15 2013

Senate Committee
Children and Families

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/15/2013*Meeting Date*Topic Guardianships Bill Number SB 590
*(if applicable)*Name Howard E. (Gene) Adams Amendment Barcode _____
*(if applicable)*Job Title AttorneyAddress 215 South Monroe Street, Second Floor Phone 850-222-3533
*Street*Tallahassee Fla. 32301
*City State Zip*E-mail gene@penningtonlaw.comSpeaking: For Against InformationRepresenting Florida Bar Real Property, Probate and Trust Law Section, Florida BarAppearing at request of Chair: Yes NoLobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

II. Present Situation:

Settlements in Guardianship Cases

Litigation settlement agreements routinely include a provision that the terms will be held in confidence by all parties. Because an adult may settle a lawsuit without court approval, those confidentiality clauses are effective and enforceable.

However, a minor cannot settle a case valued in excess of \$15,000 without court approval.¹ The court approval process requires a petition setting forth the terms of the settlement.² An order is eventually entered that also may contain the terms of settlement, or may refer to the petition.³ The petition and the order are part of a court file, and therefore, are a matter of public record and open for inspection under current law.

Public Records Requirements

The Florida Constitution specifies requirements for public access to government records. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁴ The records of the legislative, executive, and judicial branches are specifically included.⁵

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. The Public Records Act⁶ guarantees every person's right to inspect and copy any state or local government public record⁷ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸

Only the Legislature may create an exemption to public records requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity

¹ Section 744.301(2), F.S.

² Section 744.387, F.S.

³ *Id.*

⁴ FLA. CONST. art. I, s. 24(a)

⁵ *Id.*

⁶ Chapter 119, F.S.

⁷ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records see *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992).

⁸ Section 119.07(1)(a), F.S.

⁹ FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (see *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as

justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

Court Records

Florida courts have consistently held that the judiciary is not an “agency” for purposes of ch. 119, F.S.¹³ However, the Florida Supreme Court found that “both civil and criminal proceedings in Florida are public events” and that the court will “adhere to the well-established common law right of access to court proceedings and records.”¹⁴ There is a Florida constitutional guarantee of access to judicial records.¹⁵ The constitutional provision provides for public access to judicial records, except for those records expressly exempted by the State Constitution, Florida law in effect on July 1, 1993, court rules in effect on November 3, 1992, or by future acts of the legislature in accordance with the Constitution.¹⁶

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 744.3701, F.S., to provide that any court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.

Because the record is made confidential and exempt, it may not be disclosed except as provided in law. Current law allows the court, the clerk of court, the guardian and the guardian's attorney to review the guardianship court file. The bill amends s. 744.3701, F.S., to provide that record of a settlement may also be disclosed to the guardian ad litem (if any) related to the settlement, to the ward (the minor) if he or she is 14 years of age or older and has not been declared incompetent, and to the attorney for the ward. The record may also be disclosed as ordered by the court.

Section 2 of the bill provides a statement of public necessity as required by the State Constitution. The bill states that it is a public necessity to keep confidential and exempt from public disclosure information contained in a settlement record which could be used to identify a minor or ward. The information contained in these records is of a sensitive, personal nature and its disclosure could jeopardize the physical safety and financial security of the minor or ward. In

confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (see Attorney General Opinion 85-62, August 1, 1985).

¹⁰ FLA. CONST. art. I, s. 24(c)

¹¹ The bill, however, may contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c)

¹³ See e.g., *Times Publishing Company v. Ake*, 660 So. 2d 255 (Fla. 1995).

¹⁴ See *Barron v. Florida Freedom Newspapers*, 531 so. 2d 113, 116 (Fla. 1988).

¹⁵ FLA. CONST. art. I, s. 24(a)

¹⁶ FLA. CONST. art. I, ss. 24(c) and (d)

order to protect minors, wards, and others who could be at risk upon disclosure of a settlement, it is necessary to ensure that only those interested persons who are involved in settlement proceedings or the administration of the guardianship have access to reports and records.

Section 3 of the bill provides for an effective date of upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption related to guardianships; thus, **it requires a two-thirds vote for final passage.**

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption related to guardianships; thus, it includes a public necessity statement.

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption related to guardianships. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An increase in judicial workload potentially may occur due to the new obligation on the court to determine whether good cause is shown to permit disclosure of court records relating to settlement of a claim on behalf of a minor or ward, and to determine whether

disclosure and recording of such records is warranted in relation to a real property transaction, or for such other purposes as the court allows. The potential increase cannot be quantified at this time.¹⁷

The fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial workload resulting from the new obligation on the court to determine whether good cause is shown to permit disclosure of court records relating to settlement of a claim on behalf of a minor or ward, and to determine whether disclosure and recording of such records is warranted in relation to a real property transactions, or for such other purposes as the court allows.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 137920 by Children, Families, and Elder Affairs on April 15, 2013:

The amendment removes language that conforms the bill to the Open Government Sunset Review Act since the Act does not apply to an exemption that applies solely to the State Courts System.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁷ Office of the State Courts Administrator *2013 Judicial Impact Statement*, SB 610 (Mar. 4, 2013) (on file with the Senate Committee on Children, Families and Elder Affairs).

¹⁸ *Id.*



137920

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Braynon) recommended the following:

Senate Amendment (with title amendment)

Delete lines 53 - 56.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 14 - 16

and insert:

other purposes; providing a statement of

By Senator Joyner

19-00228A-13

2013610__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 744.3701, F.S.; creating an exemption from public
 4 records requirements for records relating to the
 5 settlement of a claim on behalf of a minor or ward;
 6 authorizing a guardian ad litem, a ward, a minor, and
 7 a minor's attorney to inspect guardianship reports and
 8 court records relating to the settlement of a claim on
 9 behalf of a minor or ward, upon a showing of good
 10 cause; authorizing the court to direct disclosure and
 11 recording of an amendment to a report or court records
 12 relating to the settlement of a claim on behalf of a
 13 ward or minor, in connection with real property or for
 14 other purposes; providing for future review and repeal
 15 of the public records exemption under the Open
 16 Government Sunset Review Act; providing a statement of
 17 public necessity; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Section 744.3701, Florida Statutes, is amended
 22 to read:

23 744.3701 ~~Confidentiality Inspection of report.~~-

24 (1) Unless otherwise ordered by the court, upon a showing
 25 of good cause, any initial, annual, or final guardianship report
 26 or amendment thereto, or any court record relating to the
 27 settlement of a claim, is subject to inspection only by the
 28 court, the clerk or the clerk's representative, the guardian and
 29 the guardian's attorney, the guardian ad litem with regard to

19-00228A-13

2013610__

30 the settlement of the claim, and the ward if he or she is at
 31 least 14 years of age and has not, unless he or she is a minor
 32 or has been determined to be totally incapacitated, and the
 33 ward's attorney, the minor if he or she is at least 14 years of
 34 age, or the attorney representing the minor with regard to the
 35 minor's claim, or as otherwise provided by this chapter.

36 (2) The court may direct disclosure and recording of parts
 37 of an initial, annual, or final report or amendment thereto, or
 38 a court record relating to the settlement of a claim, including
 39 a petition for approval of a settlement on behalf of a ward or
 40 minor, a report of a guardian ad litem relating to a pending
 41 settlement, or an order approving a settlement on behalf of a
 42 ward or minor, in connection with any real property transaction
 43 or for such other purpose as the court allows, in its
 44 discretion.

45 (3) Any court record relating to the settlement of a ward's
 46 or minor's claim, including a petition for approval of a
 47 settlement on behalf of a ward or minor, a report of a guardian
 48 ad litem relating to a pending settlement, or an order approving
 49 a settlement on behalf of a ward or minor, is confidential and
 50 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
 51 of the State Constitution and may not be disclosed except as
 52 specifically authorized.

53 (4) This section is subject to the Open Government Sunset
 54 Review Act in accordance with s. 119.15 and shall stand repealed
 55 on October 2, 2018, unless reviewed and saved from repeal
 56 through reenactment by the Legislature.

57 Section 2. The Legislature finds that it is a public
 58 necessity to keep confidential and exempt from public disclosure

19-00228A-13

2013610__

59 information contained in a settlement record which could be used
60 to identify a minor or ward. The information contained in these
61 records is of a sensitive, personal nature and its disclosure
62 could jeopardize the physical safety and financial security of
63 the minor or ward. In order to protect minors, wards, and others
64 who could be at risk upon disclosure of a settlement, it is
65 necessary to ensure that only those interested persons who are
66 involved in settlement proceedings or the administration of the
67 guardianship have access to reports and records. The Legislature
68 finds that the court retaining discretion to direct disclosure
69 of these records is a fair alternative to public access.

70 Section 3. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on General
Government
Ethics and Elections
Health Policy
Judiciary
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR ARTHENIA L. JOYNER
19th District

April 8, 2013

Senator Eleanor Sobel, Chair
Senate Committee on Children, Families, and Elder Affairs
520 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Madame Chair:

This is to request that Senate Bill 590, Fees and Costs Incurred in Guardianship Proceedings, be placed on the agenda for the Committee on Children Families and Elder Affairs. This bill needs to be linked to the public records exemption companion, SB 610, in this committee. Your consideration of this request to palce both bills on the next Agenda is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

RECEIVED

APR 09 2013

Senate Committee
Children and Families

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on General
Government
Ethics and Elections
Health Policy
Judiciary
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR ARTHENIA L. JOYNER
19th District

April 15, 2013

Senator Eleanor Sobel, Chair
Senate Committee on Children, Families, and Elder Affairs
520 Knott
Tallahassee, FL 32399

Dear Madame Chair:

This is to request that my Legislative Assistant, Randi Rosete, be permitted to present Senate Bill 590 related to guardianship and the companion public records exemption bill, SB 610, to the Committee on Children, Families, and Elder Affairs on April 15. Allowing my assistant to present this bill will be greatly appreciated since I will not be able to personally present it due to maintaining quorum in the Committee on Judiciary.

Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthenia L. Joyner".

Arthenia L. Joyner
Senator, District 19

ALJ/rr

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APR 15 2013

Senate Committee
Children and Families

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/15/2013

Meeting Date

Topic Guardianships Bill Number SB 610
(if applicable)
Name Howard E. (Gene) Adams Amendment Barcode _____
(if applicable)
Job Title Attorney

Address 215 South Monroe Street, Second Floor Phone 850-222-3533
Street
Tallahassee Fla. 32301 E-mail gene@penningtonlaw.com
City State Zip

Speaking: For Against Information

Representing Florida Bar Real Property, Probate and Trust Law Section, Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 804

INTRODUCER: Senator Richter

SUBJECT: Department of Elderly Affairs

DATE: April 11, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 804 requires the Legislature’s Office of Program Policy Analysis and Governmental Accountability to conduct a study to determine if the functions performed by the Department of Elder Affairs may be performed more efficiently or effectively by another unit of government.

The bill has no fiscal impact on the state and has an effective date of July 1, 2013.

This bill creates an unnumbered section in the Florida Statutes.

II. Present Situation:

The Legislature passed House Joint Resolution 290 in 1988 to put on the ballot an amendment to the State Constitution authorizing the Legislature to create the Departments of Veterans Affairs and Elderly Affairs. The amendment was adopted by the voters in 1988. In 1991, the Legislature passed ch. 91-115, L.O.F. to create the Department of Elder Affairs (department).

Section 20.41, F.S., creates the Department of Elderly Affairs (commonly referred to as the Department of Elder Affairs). The secretary of the department is appointed by the Governor, subject to confirmation by the Senate. The secretary serves at the pleasure of the Governor. The department plans and administers programs and services through planning and service areas as designated by the department.

The department is designated as the state unit on aging as defined in the federal Older Americans Act of 1965, as amended. The department designates and contracts with area agencies on aging in each of the department’s planning and service areas. Area agencies on aging are

nongovernmental, independent, not-for-profit corporations under s. 501(c)(3) of the Internal Revenue Code. The agencies coordinate and contract for long-term care services to the elderly, as well as prevention and early intervention services. The department has overall responsibility for information system planning. The department provides most services through its Division of Statewide Community-Based Services, which works through the state's eleven Area Agencies on Aging and local service providers to deliver essential services to a vital segment of the population. The department also directly administers a wide range of programs, ranging from the Long-Term Care Ombudsman Program, Statewide Public Guardianship Office, and Communities for a Lifetime to Serving Health Insurance Needs of Elders, and the Comprehensive Assessment and Review for Long-Term Care Services Program (CARES). The department also administers the Long-Term Care Ombudsman Program and must ensure that both the state and local long-term care ombudsmen councils operate in compliance with the Older Americans Act.

The department has adopted a mission statement to foster an environment that promotes well-being for Florida's elders and enables them to remain in their homes and communities. The department believes that individuals age differently, and as a result, the needs of individual seniors will vary. Some individuals may suffer from chronic conditions that began long before they reached age 60, while others may be able to live their entire lives without ever needing long-term medical or social services. One of the department's highest priorities is reducing the need for many elders to be placed in nursing homes and other long-term care facilities. Ultimately, the department has as its goal to use resources efficiently to ensure that the greatest number of elders possible get to spend their golden years living healthy, active, and fulfilling lives in their communities.

III. Effect of Proposed Changes:

Section 1 requires the Legislature's Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to conduct a study of the department. The study must:

- identify the purpose of offices within the department,
- identify the funding sources of the department,
- assess whether the implementation of long-term managed care under the Medicaid program will impact the department's functions and workload,
- assess the department's organizational structure,
- determine if any of the department's functions would be better performed by another unit of government, and
- provide recommendations on any needed changes to the department.

The bill requires OPPAGA to consult with the department, the Department of Agriculture and Consumer Services, the Department of Financial Services, the Agency for Health Care Administration, the Department of Health, the Department of Economic Opportunity, and the Justice Administrative Commission in conducting the study. OPPAGA must also consult with interested stakeholders in the study. A report from OPPAGA on its findings and recommendations is due December 31, 2013.

Section 2 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's OPPAGA will conduct the study required in the bill. OPPAGA conducts a variety of studies each year for the Legislature and can accommodate this requirement within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Richter

23-00588-13

2013804__

A bill to be entitled

An act relating to the Department of Elderly Affairs; directing the Office of Program Policy Analysis and Government Accountability to conduct a review and evaluation of the functions of the Department of Elderly Affairs; requiring the office to consult with and obtain the assistance of certain state agencies and to consult with certain stakeholders regarding the review and evaluation; requiring the office to submit a report to the Governor, the Legislature, and the Secretary of Elderly Affairs by a specified date; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Review and evaluation of the Department of Elderly Affairs.—

(1) The Office of Program Policy Analysis and Government Accountability shall conduct a review and evaluation of the Department of Elderly Affairs established under s. 20.41, Florida Statutes. The review and evaluation shall be comprehensive in its scope and, at a minimum, must:

(a) Identify the specific purpose of each office, division, program, and function within the department.

(b) Identify funding for and the funding sources of each office, division, program, and function within the department.

(c) Determine the impact on the workload of each office, division, program, and function within the department of the expiration on October 1, 2013, of certain Medicaid waiver

23-00588-13

2013804__

programs.

(d) Determine whether the department may be organized more efficiently and effectively to avoid duplication of activities and ensure that activities are well coordinated, including whether each office, division, program, and its respective functions, mission, goals, and objectives should be revised.

(e) Determine whether any department offices, divisions, programs, or functions may be performed more efficiently or effectively by another unit of government.

(f) Provide recommendations for the restructuring and relocation of department offices, divisions, programs, and functions.

(2) The office shall consult with the Department of Elderly Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, the Agency for Health Care Administration, the Department of Children and Families, the Department of Health, the Department of Economic Opportunity, and the Justice Administrative Commission. All executive branch agencies are instructed, and all other state agencies are requested, to assist the office in accomplishing the purposes set forth in this section.

(3) The office shall consult with interested stakeholders to solicit information and input regarding the review and evaluation of the Department of Elderly Affairs. Consultation with stakeholders may be accomplished through interviews, surveys, or any other manner deemed appropriate by the office.

(4) By December 31, 2013, the office shall submit a report of its findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of

23-00588-13

2013804

59 Representatives, the chairs of the appropriations committees and
60 of the appropriate substantive committees of the Senate and the
61 House of Representatives, the Legislative Auditing Committee,
62 and the Secretary of Elderly Affairs.

63 Section 2. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

February 20, 2013

The Honorable Eleanor Sobel, Chair
Senate Committee on Children, Families, & Elder Affairs
520 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Sobel:

Senate Bill 804, relating to The Department of Elder Affairs, has been referred to the Committee on Children, Families and Elder Affairs. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

cc: Claude Hendon, Staff Director

RECEIVED

FEB 21 2013

Senate Committee
Children and Families

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

April 11, 2013

The Honorable Eleanor Sobel, Chair
Senate Committee on Children, Families, & Elder Affairs
520 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

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APR 11 2013

Senate Committee
Children and Families

Dear Chair Sobel:

Thank you for the opportunity to present SB 804, related to the Department of Elderly Affairs in your committee on Monday, April 15, 2013.

Like many members, I am experiencing a scheduling conflict and will be unable to present this bill. I am requesting that my aide, Becky Kokkinos, be allowed to present this bill on my behalf.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Claude Hendon, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 976

INTRODUCER: Senator Sobel

SUBJECT: Senior Services

DATE: April 11, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Hendon	CF	Favorable
2.			CA	
3.			AFT	
4.			AP	
5.				
6.				

I. Summary:

SB 976 creates the “Florida Act for Responsible Persons,” (the act) which authorizes county governments to create a countywide, independent special taxing district to fund services for seniors. The act is modeled after part V of ch. 125, F.S., which authorizes counties to create independent taxing districts to fund children’s services. The bill provides that a district may levy up to 0.5 mill, subject to referendum approval. The bill specifies that the district will be governed by an 11-member council that is required to assess the needs of seniors in the county and report to the county commission on what services will be provided and how. Annually, thereafter, the council is required to report to the county commission on the ongoing activities of the council, including, at a minimum, an assessment of the program’s effectiveness; any necessary changes to its programs and services; and a detailed budget. The council is required to prepare its budget in accordance with the requirements applicable to special districts in ch. 189, F.S., and s. 200.065, F.S., which establishes the requirements for establishing millage rates.

The bill will not have a fiscal impact to the state and has an effective date of July 1, 2013.

This bill creates an undesignated section of the Florida Statutes that will become part of part V of chapter 125 of the Florida Statutes.

II. Present Situation:

Special Districts

Special Districts are governed by the Uniform Special District Accountability Act of 1989 in Chapter 189, F.S.¹ Section 189.403(1), F.S., defines a “special district” as a confined local government unit established for a special purpose.² The public policy intent of special districts is to provide private and public sectors an alternative governing method to “manage, own, operate, construct and finance basic capital infrastructure, facilities and services.”³ A special district can be created by general law, special act, local ordinance, or by Governor or Cabinet rule.⁴ A special district does not include:

- a school district,
- a community college district,
- a special improvement district (Seminole and Miccosukee Tribes under s. 285.17, F.S.),
- a municipal service taxing or benefit unit (MSTU/MSBU), or
- a political subdivision board of a municipality providing electrical service.⁵

While special districts have similar governing powers and restrictions as counties and municipalities, they do not have “local home rule” power that has been granted to general-purpose governments. Special districts have only the explicit authority granted by statute.⁶ Special districts are held accountable to the public and are therefore subject to public sunshine laws and financial reporting requirements.⁷

Dependent vs. Independent Special Districts

There are two types of special districts in Florida: dependent special districts and independent special districts. With some exceptions, dependent special districts are districts created by individual counties and municipalities that meet at least one of the following characteristics:

- the membership of its governing body is identical to the governing body of a single county or municipality,
- all members of its governing body are appointed by the governing body of a single county or municipality,
- during their unexpired terms, members of the special district’s governing body are subject to removal at will by the governing body of a single county or municipality,
- the district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or municipality.⁸

¹ Chapter 189, F.S.; see s. 189.401, F.S.

² Section 189.403(1), F.S.

³ Section 189.402(4), F.S.

⁴ *Id.*

⁵ *Id.*

⁶ See *Roach v. Loxahatchee Groves Water Control District*, 417 So. 2d 814 (Fla. 4th DCA 1982).

⁷ See e.g. ss. 189.417 and 189.418, F.S.

⁸ Section 189.403(2)(a)-(d), F.S. Dependent districts functionally operate as an arm of either a municipality, county or state agency.

Section 189.403(3), F.S., defines an independent special district as a district that does not meet the statutory classifications of a dependent special district. Except as otherwise authorized by general law, only the Legislature may create independent special districts.⁹

General laws or special acts that create or authorize the creation of independent special districts must address and require the following in their charters:

- powers, functions, and duties of the district regarding ad valorem taxation, bond issuance, other revenue-raising capabilities and budget preparation and approval,
- membership, organization and compensation of the governing board of the district,
- if authorized to do so, the procedures and requirements for issuing bonds,
- procedures for conducting any district elections or referenda required,
- if authorized to levy ad valorem taxes, the authorized millage rate,¹⁰ and
- methods for collecting non-ad valorem assessments, fees, or service charges.¹¹

Children's Services Districts (CSD)

Section 125.901, F.S., authorizes counties to create, by ordinance, an independent or dependent special district to provide funding for preventative, developmental, treatment, and rehabilitative services for children throughout the county. Upon approval by the electors in the county, the district may annually levy ad valorem taxes, not to exceed 0.5 mills. In addition, this section provides for an appointed governing board for the special district, specifying the powers and functions of the board; requires each board to identify and assess the needs of the children in the county served by the board and to provide an annual written report to the governing body of the county; requires the board to prepare a budget and prepare and file a financial report with the governing body of the county; and provides for the dissolution of the district.

Currently, there are eight independent Children's Services Districts in Florida:¹²

- Children's Board of Hillsborough County
- Children's Services Council of Brevard County
- Children's Services Council of Broward County
- Children's Services Council of Martin County
- Children's Services Council of Okeechobee County
- Children's Services Council of Palm Beach County
- Children's Services Council of St. Lucie County
- The Children's Trust (Miami-Dade County)

⁹ Section 189.404(4), F.S.

¹⁰ The maximum millage rate authorized for independent district ad valorem taxes varies depending on district type and the rate authority specified in general laws or special acts.

¹¹ See s. 189.404(3), F.S.

¹² Fla. Dep't. of Economic Opportunity, Division of Community Redevelopment, *Official List of Special Districts Online, Customized Special District List by Children's Services as of 2/28/2010*, available at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/criteria.cfm> (last visited April 11, 2013).

Florida Seniors

Between 2000 and 2010, the population of the United States age 65 years and over increased by 15.1 percent. At the same time, the total population increased by 9.7 percent¹³. As compared with other states, Florida had the greatest share of the senior population in both 2000 and 2010 (17.6 percent and 17.3 percent, respectively).¹⁴ In 2010, three of the top five counties with the highest percentages of the population age 65 and older were in Florida: Sumter County (43.4 percent), Charlotte County (34.1 percent), and Highlands County (32.2 percent).¹⁵ Fifty-one of Florida's counties had higher percentages of people 65 years and older than the nation, and the percentage of people age 85 and older was higher in 31 Florida counties than the nation.¹⁶

In January 2012, the Florida Department of Elder Affairs (DOEA) published the Florida Statewide Needs Assessment, which reflects the results of a survey conducted by the Bureau of Business and Economic Research at the University of Florida of 1,850 seniors age 60 and older.¹⁷ The DOEA conducts the survey to assist professional services planners, agency directors, and policy makers with their efforts to anticipate and plan for the needs of Florida's seniors. In addition to demographics, data that are part of the report include information on seniors' living circumstances, self-care limitations, nutrition, housing, healthcare, and other issues of particular effect on the geriatric population. Results are excerpted as follows:

- **Living Situation:** Nearly one-third of elders surveyed lived alone (31 percent); nearly one-half (49 percent) lived with a spouse; and the remainder lived with a child, grandchild, relative, friend, or other person.
- **Self-Care Limitations:** Of elders surveyed, 17 percent needed assistance with activities of daily living.¹⁸ An additional 51 percent required assistance with instrumental activities of daily living (tasks that enable an individual to live independently).¹⁹
- **Caregiving:** One in five elders surveyed was a caregiver. Over one-half of caregivers (56 percent) did not receive needed help with their responsibilities. Of the 21 percent of caregivers who sought help, information about resources, emotional support, help with household chores, and financial assistance were the types most often cited.
- **Health and Health Promotion:** Nearly one-quarter of surveyed elders (24 percent) reported they were not regularly exercising. Ten percent of elders reported delaying filling prescription medications; 30 percent delayed receiving dental care, and 24 percent delayed getting new eyeglasses or eye care. Over one-quarter of these elders (27 percent) delayed care because they could not afford the expense. Just over one-tenth (11 percent) had to go without treatment for emotional or mental health problems.

¹³ United States Census Bureau, *The Older Population: 2010, 2010 Census Briefs* (Nov. 2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-09.pdf> (last visited April 11, 2013).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Fla. Dep't. of Elder Affairs, *Assessing the Needs of Elder Floridians* (Jan. 11, 2012), available at http://elderaffairs.state.fl.us/does/pubs/pubs/Assessing_the_Needs_of_Elder_Floridians_Jan_2012.pdf (last visited April 11, 2013).

¹⁸ Eating, bathing, dressing, grooming, walking, and toileting. *Id.* at p. 13.

¹⁹ Money management, taking medication, performing chores, and using transportation of the telephone. *Id.*

- Nutrition: Over one-quarter of elders (26 percent) surveyed reported that they were not receiving adequate nutrition.
- Transportation: Approximately 4 percent of elders reported not being able to get where they needed or wanted, with a higher percentage reported by minority elders (12 percent) and low-income elders (7 percent).
- Community: Fifteen percent of elders reported feeling that their city was not elder friendly.
- Housing: Nine percent of elders reported feeling unsafe. Another 21 percent reported problems with their home or neighborhood, including upkeep and minor repairs, difficulty paying rent or the mortgage, roofing and plumbing issues, and other major repairs.
- Abuse, neglect, and Exploitation: Of elders surveyed, 12 percent reported that they had been a victim of consumer fraud or swindle.

III. Effect of Proposed Changes:

Section 1 creates the “Florida Act for Responsible Persons,” which authorizes counties to create a countywide, independent special taxing district to fund services for seniors, defined as individuals 65 years or older. The effect of the bill is to create authority for funding senior services that is similar to the authority that currently exists in part V of ch. 125, F.S., for funding children’s services and which was first authorized in 1986.²⁰

The bill authorizes the board of county commissioners to create a district by ordinance with the authority to levy up to 0.5 mill, subject to referendum approval. Districts created pursuant to the Act must levy and fix millage as provided in s. 200.065, F.S., which describes the requirements for determining millage applicable to all taxing authorities, and comply with the same reporting requirements applicable to children’s services districts, including the documentation required by ss. 189.415, 189.417, and 189.419, F.S. The bill provides that a district may be dissolved by special act of the Legislature; by ordinance of the county commission, subject to referendum approval; or as provided in s. 189.4042, F.S., relating to special districts. Before dissolving the district, the county would be required to assume all debts and liabilities within its available millage rate.

The referendum creating the district may specify the number of years it is authorized; alternatively, the board of county commissioners must put the issue on the ballot every 12 years after the district is authorized, subject to input from the district council.

The bill requires that the district be governed by an 11-member board consisting of:

- Four permanent positions representing
 - The executive director of the area agency on aging, or a designee who is a director of senior programs in the county.
 - The county director of social services, or a designee who is a director of services for the elderly.
 - The director of the Adult Protective Services program at the Department of Children and Families, or a designee.

²⁰ Chapter 86-197, Laws of Fla.

- The deputy secretary for Statewide Services at the Department of Health, or a designee who may be the senior administrator of the county health department.
- Two members appointed by a majority of the county governing body.
- Three members appointed by the Governor and representing, to the greatest extent possible, the cultural diversity of the county's population, of which at least one member is from the business community and one member is 60 years of age or older.
- One member appointed by the President of the Senate.
- One member appointed by the Speaker of the House.

Members of the council serve without compensation.

The bill requires the council to assess the needs of seniors in the community and submit a report to the board of county commissioners describing the activities and services the council will provide; the manner in which services will be provided; the implementation schedule; what outreach will be performed to provide services to at-risk seniors; how the council will obtain funding for unmet needs; and a strategy for interagency coordination. Thereafter, the council must provide an annual report to the county commission which contains an assessment of the effectiveness of the district; a detailed anticipated budget; a description of procedures for the early identification of at-risk seniors; a description of the degree to which the district's objectives and activities are meeting the goals of the Act; detailed information on the district's programs and services; and an assessment of what programs should be eliminated.

The council is authorized to provide preventive, developmental, treatment, rehabilitative, and other services; to allocate funds to other county agencies for services; to collect data and conduct research that may be useful in the administration of its responsibilities; to seek outside funding; to acquire or lease necessary property; and to employ necessary staff.

The bill allows two or more districts to enter into a cooperative agreement to share administrative costs, to seek grants or other funding, or to jointly fund programs serving multiple counties.

The bill specifies procedures that must be followed by the council to prepare and obtain approval of its annual budget. Officers of the district who are authorized to write checks must file a surety bond in the amount of at least \$1,000/\$1 million of the district's annual budget. The council must provide the county commission with quarterly financial reports.

The bill expresses legislative intent that funds collected by a district be used to augment, and not supplant, available resources.

Section 2 directs the Division of Law Revision and Information to place the Act in part V of ch. 125, F.S., which relates to children's services, and to retitle the part appropriately.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The bill authorizes²¹ a district to levy up to 0.5 mill to fund its operation. Although the district is created by ordinance of the board of county commissioners, it is expressly described as an independent district, which means the millage would be subject to the limitations of article VII, section 9(b) of the Florida Constitution, which limits the millage that may be levied by a special district to the millage that has been authorized by law and approved by vote of the electors.

B. Private Sector Impact:

Seniors in a senior services district should benefit from access to services paid for by the district. By its terms, the bill anticipates these will be new services.

The bill creates a funding source to pay for purchase of goods and services for seniors which should benefit private providers of those goods and services.

C. Government Sector Impact:

If approved, the bill would expand services at the local level, thereby assisting senior services agencies in meeting the needs of the population by providing services which they have identified as needed and by providing a direct source of funding.

VI. Technical Deficiencies:

Lines 53 – 61 describe the process for obtaining voter approval of the millage for a district, but do not contain language that expressly authorizes the millage, which is required by the constitution.

Lines 82 – 86 reference “a referendum creating the district” and describe subsequent procedures for reauthorizing the district. The Act provides that the district is created by the board of county

²¹ See “Technical Deficiencies Section” below.

commissioners. Initially, it is the taxing authority that is approved by referendum. The Legislature may wish to strike the term “referendum” as it appears in those lines and substitute the term “ordinance.”

Section 189.404(4), F.S., states that, except as authorized by law, only the Legislature may create independent special districts. The subsection then enumerates specific exceptions to the general prohibition, which include districts created pursuant to s. 125.901, F.S., relating to children’s services districts. Although the Act is general law authority for a county commission to create a senior services district and, therefore, complies with the general limitation of s. 189.404(4), F.S., the Legislature may wish to amend that section to strike the reference to s. 125.901, F.S., and substitute in its place part V of ch. 125, F.S., since the Act and the children’s services provisions will be codified together in that part.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Sobel

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1 A bill to be entitled
 2 An act relating to senior services; providing a short
 3 title; providing a definition; authorizing each county
 4 to create an independent special district by ordinance
 5 to provide funding for services for seniors; requiring
 6 elector approval to annually levy ad valorem taxes;
 7 requiring the district to comply with statutory
 8 requirements related to levying and fixing millage and
 9 filing financial or compliance reports; providing for
 10 the dissolution of the district; requiring the
 11 governing body of the county to periodically submit to
 12 the electorate the question of retention or
 13 dissolution of the district; creating a governing
 14 council for the district; specifying criteria for
 15 membership to the council; providing terms of office;
 16 requiring the council members to serve without
 17 compensation; specifying the powers and functions of
 18 the council; requiring the council to appoint a chair
 19 and vice chair and elect other officers, identify and
 20 assess the needs of seniors, provide training and
 21 orientation to new members of the council, make and
 22 adopt bylaws and rules for the council's operation and
 23 governance, and provide an annual report to the county
 24 governing body; authorizing two or more districts to
 25 enter into cooperative agreements; requiring the
 26 council to maintain minutes of each meeting; requiring
 27 the council to prepare a tentative annual budget and
 28 compute a millage rate to fund the district; requiring
 29 that all tax moneys collected be paid directly to the

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30 council by the county tax collector and be deposited
 31 in qualified public depositories; requiring certain
 32 members to file a surety bond; specifying expenditures
 33 of funds; requiring the council to prepare and file
 34 quarterly financial reports with the county governing
 35 body; prohibiting the council from requiring certain
 36 matching funds; providing legislative intent with
 37 respect to the use of funds collected by the council;
 38 providing a directive to the Division of Law Revision
 39 and Information; providing an effective date.
 40

41 Be It Enacted by the Legislature of the State of Florida:

42
 43 Section 1. Services for seniors; special district.—

44 (1) SHORT TITLE.—This section may be cited as the "Florida
 45 Act for Responsible Persons."

46 (2) DEFINITION.—As used in this section, the term "senior"
 47 means a person who is at least 65 years of age.

48 (3) SPECIAL DISTRICT.—Each county may, by ordinance, create
 49 an independent special district, as defined in s. 189.403,
 50 Florida Statutes, to provide countywide funding for senior
 51 services. The boundaries of such district must be coterminous
 52 with the boundaries of the county.

53 (a) Upon adoption of the ordinance creating the district,
 54 the question of levying ad valorem taxes at a rate of up to 0.5
 55 mills of assessed valuation of all properties subject to ad
 56 valorem taxes within the county, which shall be used to fund the
 57 district, shall be placed on the ballot by the governing body of
 58 the county enacting the ordinance and take effect if approved by

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59 a majority of the electors of the county voting in a referendum
60 held for such purpose. The ballot for the referendum must
61 conform to s. 101.161, Florida Statutes.

62 (b) A district created under this section shall:

63 1. Levy and fix millage as provided in s. 200.065, Florida
64 Statutes.

65 2. Maintain the same fiscal year as the county.

66 3. Comply with all other statutory requirements of general
67 application which relate to the filing of any financial or
68 compliance reports required under part III of chapter 218,
69 Florida Statutes, or any other report or documentation required
70 by law, including the requirements of ss. 189.415, 189.417, and
71 189.418, Florida Statutes.

72 (c) The district may be dissolved by special act of the
73 Legislature, or the county governing body may, by ordinance,
74 dissolve the district subject to approval by a majority of the
75 electors in the county voting on the issue. The district may
76 also be dissolved pursuant to s. 189.4042, Florida Statutes.
77 Before dissolving the district, the county shall obligate itself
78 to assume the debts, liabilities, contracts, and outstanding
79 obligations of the district within the total millage available
80 to the county for all county and municipal purposes as provided
81 under s. 9, Article VII of the State Constitution.

82 (d) A referendum by the electorate creating the district
83 may specify that the district is not subject to reauthorization
84 or may specify the number of years the initial authorization
85 remains effective. If the referendum does not prescribe terms of
86 reauthorization, the governing body of the county shall submit
87 the question of retention or dissolution to the electorate in

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88 the general election 12 years after the initial authorization.

89 1. The district council may specify, and submit to the
90 governing body of the county within 9 months before the
91 scheduled election, that the district is not subject to
92 reauthorization or may specify the number of years for which
93 reauthorization remains effective. If the district council makes
94 such specification and submission, the governing body of the
95 county shall include that information in the question submitted
96 to the electorate. If the district council does not specify and
97 submit such information, the governing body of the county shall
98 resubmit the question of reauthorization to the electorate every
99 12 years after the prior authorization. The district council may
100 recommend to the governing body of the county language for the
101 question submitted to the electorate.

102 2. This paragraph does not preclude the district council
103 from requesting that the governing body of the county submit the
104 question of retention or dissolution of a district with voter-
105 approved taxing authority to the electorate at an earlier date.

106 3. This paragraph does not limit authority to dissolve a
107 district as provided under paragraph (c).

108 (e) This section does not prohibit a county from exercising
109 such power as is provided by general or special law to provide
110 or fund services for seniors.

111 (4) COUNCIL MEMBERSHIP.—

112 (a) The district shall be governed by an 11-member council
113 consisting of:

114 1. Four permanent positions representing:

115 a. The executive director of the area agency on aging, or a
116 designee who is a director of senior programs in the county.

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- 117 b. The county director of social services, or a designee
 118 who is a director of services for the elderly.
- 119 c. The director of the Adult Protective Services program at
 120 the Department of Children and Families, or a designee.
- 121 d. The Deputy Secretary for Statewide Services at the
 122 Department of Health, or a designee who may be the senior
 123 administrator of the county health department.
- 124 2. Two members appointed for 2-year terms by a majority of
 125 the county governing body, one of whom shall represent the board
 126 of county commissioners and one of whom shall be the county
 127 representative of the Florida League of Cities.
- 128 3. Three members appointed by the Governor and
 129 representing, to the greatest extent possible, the cultural
 130 diversity of the county's population, of which at least one
 131 member is from the business community and one member is 60 years
 132 of age or older. All members appointed by the Governor must have
 133 been residents of the county during the previous 24 months.
- 134 a. Three names shall be submitted to the Governor for each
 135 appointment by the county governing body. The Governor shall
 136 make a selection within 45 days after receipt of the submitted
 137 names or request a new list of candidates.
- 138 b. The appointees shall be appointed to 4-year terms and
 139 may be reappointed for one additional term of office. The length
 140 of the terms of the initial appointees shall be adjusted to
 141 stagger the terms.
- 142 c. The Governor may remove any of his or her appointees for
 143 cause or upon the written petition of the county governing body.
 144 If any council member appointed by the Governor resigns, dies,
 145 or is removed from office, the vacancy shall be filled by the

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- 146 Governor, using the same method as the original appointment, and
 147 the new member shall be appointed for the remainder of the
 148 unexpired term.
- 149 4. One member appointed by the President of the Senate.
- 150 5. One member appointed by the Speaker of the House of
 151 Representatives.
- 152 (b) Members of the council shall serve without
 153 compensation.
- 154 (5) COUNCIL DUTIES.—
- 155 (a) The council shall:
- 156 1. Immediately after the members are appointed, elect a
 157 chair and vice chair from among its members and elect other
 158 officers as deemed necessary by the council.
- 159 2. Immediately after the officers are elected, identify and
 160 assess the needs of seniors within the county and submit a
 161 written report to the county governing body which describes:
- 162 a. The activities, services, and opportunities that will be
 163 provided to seniors.
- 164 b. The manner in which seniors will be served, including a
 165 description of arrangements and agreements that will be made
 166 with community organizations, state and local educational
 167 agencies, federal agencies, public assistance agencies, the
 168 court system, guardianship groups, and other applicable public
 169 and private agencies and organizations.
- 170 c. The anticipated schedule for providing those activities,
 171 services, and opportunities.
- 172 d. The special outreach efforts that will be undertaken to
 173 provide services to seniors who are at risk, abused, neglected,
 174 or ailing.

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- 175 e. The manner in which the council will seek and obtain
 176 funding for unmet needs.
- 177 f. The strategy for interagency coordination in order to
 178 maximize existing human and fiscal resources.
- 179 3. Provide training and orientation to all new members to
 180 allow them to perform their duties.
- 181 4. Make and adopt bylaws and rules for the council's
 182 guidance, operation, governance, and maintenance which are
 183 consistent with applicable federal or state laws or county
 184 ordinances.
- 185 5. Provide an annual written report, to be presented by
 186 January 1, to the county governing body. At a minimum, the
 187 annual report must include:
- 188 a. Information on the effectiveness of activities,
 189 services, and programs offered by the district, including, but
 190 not limited to, cost-effectiveness.
- 191 b. A detailed anticipated budget for the continuation of
 192 activities, services, and programs offered by the district and a
 193 list of all sources of funding.
- 194 c. Procedures used for the early identification of at-risk
 195 seniors who need additional or continued services, and methods
 196 for ensuring that the additional or continued services are
 197 received.
- 198 d. A description of the degree to which the district's
 199 objectives and activities are meeting the goals of this section.
- 200 e. Detailed information on the district's various programs,
 201 services, and activities available to seniors.
- 202 f. Information on district programs, services, and
 203 activities that should be eliminated; programs, services, and

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- 204 activities that should be continued; and programs, services, and
 205 activities that should be added to the basic responsibilities of
 206 the district.
- 207 (b) The council may:
- 208 1. Provide and maintain in the county the preventive,
 209 developmental, treatment, rehabilitative, and other services
 210 which the council determines are needed for the general welfare
 211 of seniors.
- 212 2. Allocate and provide funds to other county agencies that
 213 operate for the benefit of seniors.
- 214 3. Collect information and statistical data and conduct
 215 research and assessments that are helpful to the council and the
 216 county in determining the needs of seniors in the county.
- 217 4. Consult and coordinate with other agencies providing
 218 services dedicated to the welfare of seniors in order to prevent
 219 the duplication of services.
- 220 5. Seek grants from state, federal, and local agencies and
 221 accept donations from all sources.
- 222 6. Lease or buy real estate, equipment, and personal
 223 property and construct buildings as needed to carry out the
 224 powers, functions, and duties of the district, except that such
 225 purchases may not be made or buildings constructed unless paid
 226 for with cash on hand or secured by funds deposited in a
 227 financial institution.
- 228 7. Employ, pay, and provide benefits for any part-time or
 229 full-time personnel needed to carry out the powers, functions,
 230 and duties of the district.
- 231 (c) Two or more districts may enter into a cooperative
 232 agreement to:

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233 1. Share administrative costs, including staff and office
 234 space if a more efficient or effective operation will result.
 235 The cooperative agreement must include provisions for
 236 apportioning costs between the districts, keeping separate and
 237 distinct financial records for each district, and resolving any
 238 conflicts that might arise under the agreement.

239 2. Seek grants, accept donations, or jointly fund programs
 240 servicing multicounty areas. The cooperative agreement must
 241 include provisions for the adequate accounting of separate and
 242 joint funds.

243 (d) The council shall maintain minutes of each meeting,
 244 including a record of all votes cast, and make such minutes
 245 available to any interested person.

246 (6) DISTRICT BUDGET.-

247 (a) On or before July 1 of each year, the council shall,
 248 pursuant to s. 189.418, Florida Statutes, prepare a tentative
 249 annual budget of the district's expected income and
 250 expenditures, including a contingency fund. In addition, the
 251 council shall compute a proposed millage rate of up to 0.5 mills
 252 of assessed value, as necessary to fund the tentative budget.
 253 The council must comply with s. 200.065, Florida Statutes.

254 (b) After the district's budget is certified and delivered
 255 to the county governing body, the budget may not be changed or
 256 modified by the governing body or any other authority.

257 (c) As soon after collection as is reasonably practicable,
 258 all taxes collected under this section shall be paid directly to
 259 the district by the county's revenue-collection entity.

260 (d) All moneys received by the district shall be deposited
 261 into qualified public depositories, as defined in s. 280.02,

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262 Florida Statutes, with separate and distinguishable accounts
 263 established specifically for the district, and may be withdrawn
 264 only by checks signed by the chair of the council and
 265 countersigned by one other member of the council or by a chief
 266 executive officer authorized by the council.

267 1. Upon taking office, the chair and the other member of
 268 the council or chief executive officer authorized to sign checks
 269 shall each file a surety bond in the sum of at least \$1,000 for
 270 each \$1 million, or portion of such amount, of the district's
 271 annual budget, which shall be conditioned upon the faithful
 272 discharge of the duties of his or her office. The premium on
 273 such bond may be paid by the district as part of the expenses of
 274 the council. Other members of the council are not required to
 275 give bond or other security.

276 2. Funds of the district may not be expended except by
 277 check, except for expenditures of up to \$100, which may be made
 278 from a petty cash account. All expenditures from petty cash must
 279 be recorded on the books and records of the council. District
 280 funds, except expenditures from petty cash, may not be expended
 281 without prior approval of the council, in addition to the
 282 budgeting of such funds.

283 (e) Within 10 business days after the expiration of each
 284 annual quarter, the council shall prepare and file with the
 285 county governing body a financial report that includes:

286 1. The council's total expenditures for the quarter.

287 2. The council's total receipts during the quarter.

288 3. A statement of the funds the council has on hand, has
 289 invested, or has deposited at the end of the quarter.

290 4. The council's total administrative costs for the

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291 quarter.

292 (f) The council may not require any service provider to
293 provide additional matching funds as a condition of providing
294 district services or programs to seniors.

295 (g) It is the intent of the Legislature that the funds
296 collected pursuant to this section be used to support
297 improvements in services for seniors and that such funds not be
298 used as a substitute for existing resources or for resources
299 that would otherwise be available for such services.

300 Section 2. The Division of Law Revision and Information is
301 requested to place the provisions of section 1 of this act into
302 part V of chapter 125, Florida Statutes, and to appropriately
303 retitle that part.

304 Section 3. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/15/13

Meeting Date

Topic Senior Services

Bill Number 976
(if applicable)

Name Laura Cantwell

Amendment Barcode _____
(if applicable)

Job Title Associate State Director - Advocacy

Address 200 W College Avenue, Suite 304

Phone 577 5103

Tallahassee FL 32301
City State Zip

E-mail lcantwell@oarp.org

Speaking: For Against Information

Representing AARP

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

Speaking: For Against Information

Representing Florida Bar Real Property, Probate and Trust Law Section, Florida Bar

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1212

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Soto

SUBJECT: State Ombudsman Program

DATE: April 15, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Fav/CS
2.			HP	
3.			AHS	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 1212 revises and updates the Long-Term Care Ombudsman Program. The program is comprised of volunteer ombudsmen who investigate and resolve resident complaints in long-term care facilities, such as nursing homes and assisted living facilities. The ombudsmen are organized into local councils and a state council. The bill updates terminology and the local councils are renamed districts. Terminology is updated across various sections of law.

This substantially amends the following sections of the Florida Statutes: 20.41, 400.0060, 400.0061, 400.0063, 400.0065, 400.0067, 400.0069, 400.0070, 400.0071, 400.0073, 400.0074, 400.0075, 400.0078, 400.0079, 400.0081, 400.0083, 400.0087, 400.0089, 400.0091, 400.021, 400.022, 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23, 400.235, 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.07, 429.19, 429.26, 429.28, 429.34, 429.35, 429.85, and 744.444.

This bill does not have a fiscal impact to the state and has an effective date of July 1, 2013.

II. Present Situation:

Older Americans Act

The Older Americans Act (OAA) was enacted in 1965 to assist elders to lead independent, meaningful, and dignified lives in their own communities rather than in more costly residential or nursing home settings.¹ The OAA programs are administered through area agencies on aging under the Department of Elder Affairs (DOEA). To be eligible for OAA programs, individuals must be age 60 or older. Spouses and disabled adults younger than 60 may receive services in certain circumstances. Preference is given to elders with the greatest economic or social needs, particularly low-income minority individuals. The OAA was most recently reauthorized in 2006 to supply funding for several nutrition programs and in-home and supportive services for elders. These services include:

- caregiver support;
- congregate meals and nutrition education at senior centers;
- home-delivered meals;
- homemaker and chore services;
- information and referral; and
- transportation.

Florida's Long-Term Care Ombudsman Program (LTCOP) was created in 1975 as a result of the OAA. The OAA grants a special set of residents' rights to individuals who live in long-term care facilities such as nursing homes, assisted living facilities and adult family care homes.²

Long-Term Care Ombudsman Program

In the state of Florida, a long-term care ombudsman is a volunteer who helps to improve the lives of people who live in long-term care settings like nursing homes, assisted living facilities, and adult family care homes by investigating and resolving their complaints against the facility.

As Florida's elders transition into long-term care facilities, they need a strong support system. Unfortunately, many long-term care residents do not have anyone to look out for their best interests when it comes to personal health, safety, welfare and rights. The LTCOP is made up of more than 300 volunteers who are advocates for the residents to improve their quality of life.

The LTCOP is administratively housed within DOEA. The LTCOP undertakes to discover, investigate, and determine the presence of conditions or individuals which constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. The LTCOP accomplishes these tasks by conducting investigations of complaints filed by or on behalf of residents of nursing homes, assisted living facilities, and adult family care homes and by conducting annual administrative assessments of such facilities. An administrative assessment is a resident-centered, unannounced review of conditions in the facility which have an impact on

¹ Government Program Summaries, Office of Program Policy Analysis and Governmental Accountability website, available at <http://www.oppaga.state.fl.us/profiles/5032/> (last visited April 9, 2013).

² Department of Elder Affairs, Florida's Long-Term Care Ombudsman Program website, available at <http://ombudsman.myflorida.com/index.php> (last visited April 9, 2013).

the rights, health, safety, and welfare of residents with the purpose of noting needed improvements and making recommendations to enhance the quality of life for residents.

The LTCOP is not the enforcement and regulatory oversight authority for long-term care facilities. That responsibility falls to the Agency for Health Care Administration (AHCA), which is responsible for licensing long-term care facilities. Instead, certified ombudsmen work as independent advocates, working solely on behalf of residents to mediate disputes between residents and long-term care facilities on an informal basis. The LTCOP provides residents with the opportunity to develop personal and confidential relationships with the ombudsmen and creates an environment that allows a resident to candidly voice complaints. If a complaint is verified by the ombudsman that could violate the facility's licensure or be criminal activity, the LTCOP refers the issue to the AHCA, Adult Protective Services within the Department of Children and Families (DCF), the Attorney General's Office, or other agencies as appropriate.³

III. Effect of Proposed Changes:

Section 1 amends s. 400.0060, F.S., to revise and create definitions of terms used in the ombudsman statute. Definitions for "district," "long-term care facility," and "ombudsman" are updated. The term "representative of the office" is defined to include the state ombudsman, employees, and certified ombudsmen. The term "state ombudsman" is defined as the person appointed by the secretary of the DOEA to administer the ombudsman program. The term "resident" is revised to include persons over 18 who reside in a long-term care facility

Section 2 amends s. 400.0061, F.S., which provides legislative findings and intent, to conform existing text to newly defined terms.

Section 3 amends s. 400.0063, F.S., which establishes the office of state ombudsman, to conform existing text to newly defined terms.

Section 4 amends s. 400.0065, F.S., relating to the duties of the state ombudsman, to give the state ombudsman the final authority to make appointments of individuals serving as ombudsmen; to update position titles of individuals to receive the annual ombudsman program report; and to revise terminology to conform to new definitions.

Section 5 amends s. 400.0067, F.S., relating to the State Long-Term Care Ombudsman Council, to update terminology. Currently, appointments are made by the Governor. Under the bill, the secretary of the DOEA will appoint the council.

Section 6 amends s. 400.0069, F.S., relating to the local ombudsman councils. The councils are renamed as districts. The bill clarifies duties and district activities; provides for development of family councils within facilities; clarifies that ombudsmen may be allowed to serve in a different district for good cause shown; and clarifies the application, background screening, and training requirements needed to become a certified ombudsman.

³ Department of Elder Affairs, *SB 1212 2013 Legislative Bill Analysis*, (Mar. 13, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs.)

Section 7 amends s. 400.0070, F.S., relating to ombudsman conflicts of interest, to conform to newly-defined terms.

Section 8 amends s. 400.0071, F.S., relating to how ombudsmen investigate and resolve complaints. The bill separates and removes references to the administrative assessment process from the complaint process.

Section 9 amends s. 400.0073, F.S., relating to complaint investigations, to revise procedures and conform to newly-defined terms.

Section 10 amends s. 400.0074, F.S., relating to ombudsman administrative assessments of long-term care facilities, to clarify that assessments must be resident-centered. The bill moves the rulemaking authority from s. 400.0071, F.S., and conforms to newly-defined terms.

Section 11 amends s. 400.0075, F.S., relating to complaint resolution, to conform to newly-defined terms and to clarify complaint reporting procedures.

Section 12 revises s. 400.0078, F.S., relating to access to the ombudsmen, to add e-mail as a way to make complaints. The bill also requires long-term care facilities to notify all residents and their families upon admission that retaliation against residents making complaints to the ombudsman is prohibited by law.

Section 13 amends s. 400.0079, F.S., relating to immunity for persons making complaints, to conform to newly-defined terms.

Section 14 amends s. 400.0081, F.S., relating to ombudsman access to long-term care facilities, to conform to newly-defined terms and to delete the limitation that ombudsmen have access to residents only for investigating a complaint.

Section 15 amends s. 400.0083, F.S., relating to interference with the ombudsman, to make technical and conforming changes.

Section 16 amends s. 400.0087, F.S., relating to oversight of the ombudsman program by DOEA, to make technical and conforming changes.

Section 17 amends s. 400.0089, F.S., relating to information on ombudsman complaints, to make technical and conforming changes.

Section 18 revises s. 400.0091, F.S., relating to ombudsman training, to clarify training requirements and make conforming changes.

Sections 19 – 42 amends ss. 20.41, 400.021, 400.022, 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23, 400.235, 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.07, 429.19, 429.26, 429.28, 429.34, 429.35, 429.85, and 744.444, F.S., to conform to newly-defined terms and to make technical changes.

Section 43 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on April 15, 2013:

- The definition of “resident” in s. 400.0060, F.S., is revised to include residents of long-term care facilities age 18 or older.
- Proposed language to make the State Long-Term Care Ombudsman Council an advisory council is removed and the current role of the council is retained in the CS.
- Current law allowing the state ombudsman to refer complaints to law enforcement when criminal activity is suspected is retained in the CS.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Clemens) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 400.0060, Florida Statutes, is amended to read:

400.0060 Definitions.—When used in this part, unless the context clearly dictates otherwise, the term:

(1) "Administrative assessment" means a review of conditions in a long-term care facility which impact the rights, health, safety, and welfare of residents with the purpose of noting needed improvement and making recommendations to enhance



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13 the quality of life for residents.

14 (2) "Agency" means the Agency for Health Care
15 Administration.

16 (3) "Department" means the Department of Elderly Affairs.

17 (4) "District" means a geographical area designated by the
18 state ombudsman in which individuals certified as ombudsmen
19 carry out the duties of the state ombudsman program. "Local
20 council" means a local long-term care ombudsman council
21 designated by the ombudsman pursuant to s. 400.0069. Local
22 councils are also known as district long-term care ombudsman
23 councils or district councils.

24 (5) "Long-term care facility" means a nursing home
25 facility, assisted living facility, adult family-care home,
26 board and care facility, facility where continuing long-term
27 care is provided, or any other similar residential adult care
28 facility.

29 (6) "Office" means the Office of State Long-Term Care
30 Ombudsman created by s. 400.0063.

31 (7) "Ombudsman" means an individual who has been certified
32 by the state ombudsman as meeting the requirements of ss.
33 400.0069, 400.0070, and 400.0091 ~~the individual appointed by the~~
34 ~~Secretary of Elderly Affairs to head the Office of State Long-~~
35 ~~Term Care Ombudsman.~~

36 (8) "Representative of the office" means the state
37 ombudsman, an employee of the office, or an individual certified
38 as an ombudsman.

39 (9)-(8) "Resident" means an individual 18 ~~60~~ years of age or
40 older who resides in a long-term care facility.

41 (10)-(9) "Secretary" means the Secretary of Elderly Affairs.



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42 ~~(11)-(10)~~ "State council" means the State Long-Term Care
43 Ombudsman Council created by s. 400.0067.

44 (12) "State ombudsman" means the individual appointed by
45 the Secretary of Elderly Affairs to head the Office of State
46 Long-Term Care Ombudsman.

47 (13) "State ombudsman program" means the program operating
48 under the direction of the office.

49 Section 2. Section 400.0061, Florida Statutes, is amended
50 to read:

51 400.0061 Legislative findings and intent; long-term care
52 facilities.-

53 (1) The Legislature finds that conditions in long-term care
54 facilities in this state are such that the rights, health,
55 safety, and welfare of residents are not fully ensured by rules
56 of the Department of Elderly Affairs or the Agency for Health
57 Care Administration or by the good faith of owners or operators
58 of long-term care facilities. Furthermore, there is a need for a
59 formal mechanism whereby a long-term care facility resident, a
60 representative of a long-term care facility resident, or any
61 other concerned citizen may make a complaint against the
62 facility or its employees, or against other persons who are in a
63 position to restrict, interfere with, or threaten the rights,
64 health, safety, or welfare of a long-term care facility
65 resident. The Legislature finds that concerned citizens are
66 often more effective advocates for the rights of others than
67 governmental agencies. The Legislature further finds that in
68 order to be eligible to receive an allotment of funds authorized
69 and appropriated under the federal Older Americans Act, the
70 state must establish and operate an Office of State Long-Term



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71 Care Ombudsman, to be headed by the state ~~Long-Term Care~~
72 ombudsman, and carry out a state ~~long-term care~~ ombudsman
73 program.

74 (2) It is the intent of the Legislature, therefore, to
75 utilize voluntary citizen ombudsmen ~~ombudsman councils~~ under the
76 leadership of the state ombudsman, and, through them, to operate
77 a state ~~an~~ ombudsman program, which shall, without interference
78 by any executive agency, undertake to discover, investigate, and
79 determine the presence of conditions or individuals who ~~which~~
80 constitute a threat to the rights, health, safety, or welfare of
81 the residents of long-term care facilities. To ensure that the
82 effectiveness and efficiency of such investigations are not
83 impeded by advance notice or delay, the Legislature intends that
84 representatives of the office ~~ombudsman and ombudsman councils~~
85 ~~and their designated representatives~~ not be required to obtain
86 warrants in order to enter into or conduct investigations or
87 onsite administrative assessments of long-term care facilities.
88 It is the further intent of the Legislature that the environment
89 in long-term care facilities be conducive to the dignity and
90 independence of residents and that investigations by
91 representatives of the office ~~ombudsman councils~~ shall further
92 the enforcement of laws, rules, and regulations that safeguard
93 the health, safety, and welfare of residents.

94 Section 3. Section 400.0063, Florida Statutes, is amended
95 to read:

96 400.0063 Establishment of Office of State Long-Term Care
97 Ombudsman; designation of ombudsman and legal advocate.—

98 (1) There is created an Office of State Long-Term Care
99 Ombudsman in the Department of Elderly Affairs.



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100 (2) (a) The Office of State Long-Term Care Ombudsman shall
101 be headed by the state ~~Long-Term Care~~ ombudsman, who shall serve
102 on a full-time basis and shall personally, or through
103 representatives of the office, carry out the purposes and
104 functions of the state ombudsman program ~~office~~ in accordance
105 with state and federal law.

106 (b) The state ombudsman shall be appointed by and shall
107 serve at the pleasure of the Secretary of Elderly Affairs. The
108 secretary shall appoint a person who has expertise and
109 experience in the fields of long-term care and advocacy to serve
110 as state ombudsman.

111 (3) (a) There is created in the office the position of legal
112 advocate, who shall be selected by and serve at the pleasure of
113 the state ombudsman and shall be a member in good standing of
114 The Florida Bar.

115 (b) The duties of the legal advocate shall include, but not
116 be limited to:

117 1. Assisting the state ombudsman in carrying out the duties
118 of the office with respect to the abuse, neglect, exploitation,
119 or violation of rights of residents of long-term care
120 facilities.

121 2. Assisting the state council and representatives of the
122 office ~~local councils~~ in carrying out their responsibilities
123 under this part.

124 3. Pursuing administrative, legal, and other appropriate
125 remedies on behalf of residents.

126 4. Serving as legal counsel to the state council and
127 representatives of the office ~~local councils, or individual~~
128 ~~members thereof~~, against whom any suit or other legal action is



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129 initiated in connection with the performance of the official
130 duties of the state ombudsman program ~~councils or an individual~~
131 ~~member.~~

132 Section 4. Section 400.0065, Florida Statutes, is amended
133 to read:

134 400.0065 Office of State Long-Term Care Ombudsman; duties
135 and responsibilities.-

136 (1) The purpose of the Office of State Long-Term Care
137 Ombudsman is ~~shall be~~ to:

138 (a) Identify, investigate, and resolve complaints made by
139 or on behalf of residents of long-term care facilities relating
140 to actions or omissions by providers or representatives of
141 providers of long-term care services, other public or private
142 agencies, guardians, or representative payees that may adversely
143 affect the health, safety, welfare, or rights of the residents.

144 (b) Provide services that assist in protecting the health,
145 safety, welfare, and rights of residents.

146 (c) Inform residents, their representatives, and other
147 citizens about obtaining the services of the state ~~Long-Term~~
148 ~~Care~~ ombudsman program and its representatives.

149 (d) Ensure that residents have regular and timely access to
150 the services provided through the office and that residents and
151 complainants receive timely responses from representatives of
152 the office to their complaints.

153 (e) Represent the interests of residents before
154 governmental agencies and seek administrative, legal, and other
155 remedies to protect the health, safety, welfare, and rights of
156 the residents.

157 (f) Administer the state council ~~and local councils.~~



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158 (g) Analyze, comment on, and monitor the development and
159 implementation of federal, state, and local laws, rules, and
160 regulations, and other governmental policies and actions, that
161 pertain to the health, safety, welfare, and rights of the
162 residents, with respect to the adequacy of long-term care
163 facilities and services in the state, and recommend any changes
164 in such laws, rules, regulations, policies, and actions as the
165 office determines to be appropriate and necessary.

166 (h) Provide technical support for the development of
167 resident and family councils to protect the well-being and
168 rights of residents.

169 (2) The state ~~Long-Term-Care~~ ombudsman has ~~shall~~ have the
170 duty and authority to:

171 (a) Establish and coordinate districts ~~local councils~~
172 throughout the state.

173 (b) Perform the duties specified in state and federal law,
174 rules, and regulations.

175 (c) Within the limits of appropriated federal and state
176 funding, employ such personnel as are necessary to perform
177 adequately the functions of the office and provide or contract
178 for legal services to assist the state council and
179 representatives of the office ~~local councils~~ in the performance
180 of their duties. ~~Staff positions established for the purpose of~~
181 ~~coordinating the activities of each local council and assisting~~
182 ~~its members may be filled by the ombudsman after approval by the~~
183 ~~secretary. Notwithstanding any other provision of this part,~~
184 ~~upon certification by the ombudsman that the staff member hired~~
185 ~~to fill any such position has completed the initial training~~
186 ~~required under s. 400.0091, such person shall be considered a~~



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187 ~~representative of the State Long Term Care Ombudsman Program for~~
188 ~~purposes of this part.~~

189 (d) Contract for services necessary to carry out the
190 activities of the office.

191 (e) Apply for, receive, and accept grants, gifts, or other
192 payments, including, but not limited to, real property, personal
193 property, and services from a governmental entity or other
194 public or private entity or person, and make arrangements for
195 the use of such grants, gifts, or payments.

196 (f) Coordinate, to the greatest extent possible, state and
197 local ombudsman services with the protection and advocacy
198 systems for individuals with developmental disabilities and
199 mental illnesses and with legal assistance programs for the poor
200 through adoption of memoranda of understanding and other means.

201 ~~(g) Enter into a cooperative agreement with the Statewide~~
202 ~~Advocacy Council for the purpose of coordinating and avoiding~~
203 ~~duplication of advocacy services provided to residents.~~

204 (g) ~~(h)~~ Enter into a cooperative agreement with the Medicaid
205 Fraud Division as prescribed under s. 731(e)(2)(B) of the Older
206 Americans Act.

207 (h) ~~(i)~~ Prepare an annual report describing the activities
208 carried out by the office, the state council, and the districts
209 ~~local councils~~ in the year for which the report is prepared. The
210 state ombudsman shall submit the report to the secretary, the
211 United States Assistant Secretary for Aging, the Governor, the
212 President of the Senate, the Speaker of the House of
213 Representatives, the Secretary of Children and Families, and the
214 Secretary of Health Care Administration at least 30 days before
215 the convening of the regular session of the Legislature. ~~The~~



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216 ~~secretary shall in turn submit the report to the United States~~
217 ~~Assistant Secretary for Aging, the Governor, the President of~~
218 ~~the Senate, the Speaker of the House of Representatives, the~~
219 ~~Secretary of Children and Family Services, and the Secretary of~~
220 ~~Health Care Administration.~~ The report shall, at a minimum:

221 1. Contain and analyze data collected concerning complaints
222 about and conditions in long-term care facilities and the
223 disposition of such complaints.

224 2. Evaluate the problems experienced by residents.

225 3. Analyze the successes of the state ombudsman program
226 during the preceding year, including an assessment of how
227 successfully the office ~~program~~ has carried out its
228 responsibilities under the Older Americans Act.

229 4. Provide recommendations for policy, regulatory, and
230 statutory changes designed to solve identified problems; resolve
231 residents' complaints; improve residents' lives and quality of
232 care; protect residents' rights, health, safety, and welfare;
233 and remove any barriers to the optimal operation of the state
234 ~~Long-Term Care~~ ombudsman program.

235 5. Contain recommendations from the state ~~Long-Term Care~~
236 ~~Ombudsman~~ council regarding program functions and activities and
237 recommendations for policy, regulatory, and statutory changes
238 designed to protect residents' rights, health, safety, and
239 welfare.

240 6. Contain any relevant recommendations from
241 representatives of the office ~~local councils~~ regarding program
242 functions and activities.

243 Section 5. Section 400.0067, Florida Statutes, is amended
244 to read:



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245 400.0067 State Long-Term Care Ombudsman Council; duties;
246 membership.—

247 (1) There is created, within the Office of State Long-Term
248 Care Ombudsman, the State Long-Term Care Ombudsman Council.

249 (2) The state ~~Long-Term Care Ombudsman~~ council shall:

250 (a) Serve as an advisory body to assist the state ombudsman
251 in reaching a consensus among districts ~~local councils~~ on issues
252 affecting residents and impacting the optimal operation of the
253 program.

254 (b) Serve as an appellate body in receiving from the
255 districts ~~local councils~~ complaints not resolved at the district
256 ~~local~~ level. Any individual member or members of the state
257 council may enter any long-term care facility involved in an
258 appeal, pursuant to the conditions specified in s. 400.0074(2).

259 (c) Assist the state ombudsman to discover, investigate,
260 and determine the existence of abuse or neglect in any long-term
261 care facility, and work with the adult protective services
262 program as required in ss. 415.101-415.113.

263 (d) Assist the state ombudsman in eliciting, receiving,
264 responding to, and resolving complaints made by or on behalf of
265 residents.

266 (e) Elicit and coordinate state, district ~~local~~, and
267 voluntary organizational assistance for the purpose of improving
268 the care received by residents.

269 (f) Assist the state ombudsman in preparing the annual
270 report described in s. 400.0065.

271 (3) The state ~~Long-Term Care Ombudsman~~ council shall be
272 composed of one active certified ombudsman from each district
273 ~~local council member~~ elected by each local council plus three



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274 at-large members appointed by the secretary ~~Governor~~.

275 (a) Each district manager, in consultation with the
276 district ombudsmen, shall select a district ombudsman ~~local~~
277 ~~council shall elect by majority vote a representative from among~~
278 ~~the council members~~ to represent the interests of the district
279 ~~local council~~ on the state council. A ~~local council chair may~~
280 ~~not serve as the representative of the local council on the~~
281 ~~state council~~.

282 (b)1. The state ombudsman ~~secretary~~, ~~after consulting with~~
283 ~~the ombudsman~~, shall submit to the secretary ~~Governor~~ a list of
284 individuals ~~persons~~ recommended for appointment to the at-large
285 positions on the state council. The list may ~~shall~~ not include
286 the name of any individual ~~person~~ who is currently serving in a
287 district ~~on a local council~~.

288 2. The secretary ~~Governor~~ shall appoint three at-large
289 members chosen from the list.

290 3. If the secretary ~~Governor~~ does not appoint an at-large
291 member to fill a vacant position within 60 days after the list
292 is submitted, the state ~~secretary~~, ~~after consulting with the~~
293 ~~ombudsman~~, shall appoint an at-large member to fill that vacant
294 position.

295 (4) (a) ~~(e)~~1. All State council members shall serve 3-year
296 terms.

297 2. A member of the state council may not serve more than
298 two consecutive terms.

299 (b) ~~3~~. A district manager, in consultation with the district
300 ombudsmen, ~~local council~~ may recommend replacement ~~removal~~ of
301 its selected ombudsman ~~on elected representative from the state~~
302 ~~council by a majority vote~~. If the district manager, in



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303 consultation with the district ombudsmen, selects a replacement
304 ombudsman, council votes to remove its representative, the local
305 council chair shall immediately notify the state ombudsman must
306 be notified. The secretary shall advise the Governor of the
307 local council's vote upon receiving notice from the ombudsman.

308 (c)4. The position of any member missing three state
309 council meetings within a 1-year period without cause may be
310 declared vacant by the state ombudsman. The findings of the
311 state ombudsman regarding cause shall be final and binding.

312 (d)5. Any vacancy on the state council shall be filled in
313 the same manner as the original appointment.

314 (e)(d)1. The state council shall elect a chair to serve for
315 a term of 1 year. A chair may not serve more than two
316 consecutive terms.

317 2. The chair shall select a vice chair from among the
318 members. The vice chair shall preside over the state council in
319 the absence of the chair.

320 3. The chair may create additional executive positions as
321 necessary to carry out the duties of the state council. Any
322 person appointed to an executive position shall serve at the
323 pleasure of the chair, and his or her term shall expire on the
324 same day as the term of the chair.

325 4. A chair may be immediately removed from office before
326 ~~prior to~~ the expiration of his or her term by a vote of two-
327 thirds of all state council members present at any meeting at
328 which a quorum is present. If a chair is removed from office
329 before ~~prior to~~ the expiration of his or her term, a replacement
330 chair shall be chosen during the same meeting in the same manner
331 as described in this paragraph, and the term of the replacement



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332 chair shall begin immediately. The replacement chair shall serve
333 for the remainder of the term and is eligible to serve two
334 subsequent consecutive terms.

335 (f)~~(e)~~1. The state council shall meet upon the call of the
336 chair or upon the call of the state ombudsman. The state council
337 shall meet at least quarterly but may meet more frequently as
338 needed.

339 2. A quorum shall be considered present if more than 50
340 percent of all active state council members are in attendance at
341 the same meeting.

342 3. The state council may not vote on or otherwise make any
343 decisions resulting in a recommendation that will directly
344 impact the state council or any district ~~local council~~, outside
345 of a publicly noticed meeting at which a quorum is present.

346 (g)~~(f)~~ Members shall receive no compensation but shall,
347 with approval from the state ombudsman, be reimbursed for per
348 diem and travel expenses as provided in s. 112.061.

349 Section 6. Section 400.0069, Florida Statutes, is amended
350 to read:

351 400.0069 ~~Local~~ Long-term care ombudsman districts ~~councils~~;
352 duties; appointment ~~membership~~.-

353 (1) (a) The state ombudsman shall designate districts ~~local~~
354 ~~long-term care ombudsman councils~~ to carry out the duties of the
355 state ~~Long-Term Care~~ ombudsman program ~~within local communities~~.
356 Each district ~~local council~~ shall function under the direction
357 of the state ombudsman.

358 (b) The state ombudsman shall ensure that there are
359 representatives of the office ~~is at least one local council~~
360 operating in each district ~~of the department's planning and~~



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361 ~~service areas. The ombudsman may create additional local~~
362 ~~councils~~ as necessary to ensure that residents throughout the
363 state have adequate access to state Long-Term Care ombudsman
364 program services. ~~The ombudsman, after approval from the~~
365 ~~secretary, shall designate the jurisdictional boundaries of each~~
366 ~~local council.~~

367 (2) The duties of the representatives of the office in the
368 districts ~~local councils~~ are to:

369 (a) Provide services to assist in ~~Serve as a third-party~~
370 ~~mechanism for~~ protecting the health, safety, welfare, and ~~civil~~
371 ~~and human~~ rights of residents.

372 (b) Discover, investigate, and determine the existence of
373 abuse, ~~or~~ neglect, or exploitation using in any long-term care
374 ~~facility and to use~~ the procedures provided for in ss. 415.101-
375 415.113 when applicable.

376 (c) Identify ~~Elicit, receive,~~ investigate, ~~respond to,~~ and
377 resolve complaints made by or on behalf of residents relating to
378 actions or omissions by providers or representatives of
379 providers of long-term care services, other public or private
380 agencies, guardians, or representative payees that may adversely
381 affect the health, safety, welfare, or rights of residents.

382 (d) Review and, if necessary, comment on all existing or
383 proposed rules, regulations, and other governmental policies and
384 actions relating to long-term care facilities that may
385 potentially have an effect on the rights, health, safety, and
386 welfare of residents.

387 (e) Review personal property and money accounts of
388 residents who are receiving assistance under the Medicaid
389 program pursuant to an investigation to obtain information



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390 regarding a specific complaint ~~or problem.~~

391 (f) Recommend that the state ombudsman and the legal
392 advocate seek administrative, legal, and other remedies to
393 protect the health, safety, welfare, and rights of ~~the~~
394 residents.

395 (g) Provide technical assistance for the development of
396 resident and family councils within long-term care facilities.

397 (h) ~~(g)~~ Carry out other activities that the state ombudsman
398 determines to be appropriate.

399 (3) In order to carry out the duties specified in
400 subsection (2), a representative of the office may ~~member of a~~
401 ~~local council is authorized to~~ enter any long-term care facility
402 without notice or without first obtaining a warrant; however,
403 ~~subject to the provisions of s. 400.0074(2)~~ may apply regarding
404 notice of a followup administrative assessment.

405 (4) Each district ~~local council~~ shall be composed of
406 ombudsmen ~~members~~ whose primary residences are ~~residence is~~
407 located within the boundaries of the district ~~local council's~~
408 ~~jurisdiction.~~

409 (a) Upon good cause shown, the state ombudsman, in his or
410 her sole discretion, may appoint an ombudsman to another
411 district. ~~The ombudsman shall strive to ensure that each local~~
412 ~~council include the following persons as members:~~

413 1. ~~At least one medical or osteopathic physician whose~~
414 ~~practice includes or has included a substantial number of~~
415 ~~geriatric patients and who may practice in a long-term care~~
416 ~~facility;~~

417 2. ~~At least one registered nurse who has geriatric~~
418 ~~experience;~~



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419 ~~3. At least one licensed pharmacist;~~

420 ~~4. At least one registered dietitian;~~

421 ~~5. At least six nursing home residents or representative~~
422 ~~consumer advocates for nursing home residents;~~

423 ~~6. At least three residents of assisted living facilities~~
424 ~~or adult family care homes or three representative consumer~~
425 ~~advocates for alternative long-term care facility residents;~~

426 ~~7. At least one attorney; and~~

427 ~~8. At least one professional social worker.~~

428 (b) The following individuals may not be appointed as
429 ombudsmen:

430 1. The owner or representative of a long-term care
431 facility.

432 2. A provider or representative of a provider of long-term
433 care services.

434 3. An employee of the agency.

435 4. An employee of the department, except for a
436 representative of the office.

437 5. An employee of the Department of Children and Families.

438 6. An employee of the Agency for Persons with Disabilities.

439 ~~In no case shall the medical director of a long-term care~~
440 ~~facility or an employee of the agency, the department, the~~
441 ~~Department of Children and Family Services, or the Agency for~~
442 ~~Persons with Disabilities serve as a member or as an ex officio~~
443 ~~member of a council.~~

444 (5) (a) To be appointed as an ombudsman, an individual must:

445 1. Individuals wishing to join a local council shall submit
446 an application to the state ombudsman or his or her designee.

447 2. Successfully complete level 2 background screening



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448 pursuant to s. 430.0402 and chapter 435. ~~The ombudsman shall~~
449 ~~review the individual's application and advise the secretary of~~
450 ~~his or her recommendation for approval or disapproval of the~~
451 ~~candidate's membership on the local council. If the secretary~~
452 ~~approves of the individual's membership, the individual shall be~~
453 ~~appointed as a member of the local council.~~

454 (b) The state ombudsman shall approve or deny the
455 appointment of the individual as an ombudsman. ~~The secretary may~~
456 ~~rescind the ombudsman's approval of a member on a local council~~
457 ~~at any time. If the secretary rescinds the approval of a member~~
458 ~~on a local council, the ombudsman shall ensure that the~~
459 ~~individual is immediately removed from the local council on~~
460 ~~which he or she serves and the individual may no longer~~
461 ~~represent the State Long-Term Care Ombudsman Program until the~~
462 ~~secretary provides his or her approval.~~

463 (c) Upon appointment as an ombudsman, the individual may
464 participate in district activities but may not represent the
465 office or conduct any authorized program duties until the
466 individual has completed the initial training specified in s.
467 400.0091(1) and has been certified by the state ombudsman.

468 (d) The state ombudsman, for good cause shown, such as
469 development of a conflict of interest, failure to adhere to the
470 policies and procedures established by the office, or
471 demonstrated inability to carry out the responsibilities of the
472 office, may rescind the appointment of an individual as an
473 ombudsman. After the appointment is rescinded, the individual
474 may not conduct any duties as an ombudsman and may not represent
475 the office or the state ombudsman program. ~~A local council may~~
476 ~~recommend the removal of one or more of its members by~~



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477 ~~submitting to the ombudsman a resolution adopted by a two-thirds~~
478 ~~vote of the members of the council stating the name of the~~
479 ~~member or members recommended for removal and the reasons for~~
480 ~~the recommendation. If such a recommendation is adopted by a~~
481 ~~local council, the local council chair or district coordinator~~
482 ~~shall immediately report the council's recommendation to the~~
483 ~~ombudsman. The ombudsman shall review the recommendation of the~~
484 ~~local council and advise the secretary of his or her~~
485 ~~recommendation regarding removal of the council member or~~
486 ~~members.~~

487 ~~(6) (a) Each local council shall elect a chair for a term of~~
488 ~~1 year. There shall be no limitation on the number of terms that~~
489 ~~an approved member of a local council may serve as chair.~~

490 ~~(b) The chair shall select a vice chair from among the~~
491 ~~members of the council. The vice chair shall preside over the~~
492 ~~council in the absence of the chair.~~

493 ~~(c) The chair may create additional executive positions as~~
494 ~~necessary to carry out the duties of the local council. Any~~
495 ~~person appointed to an executive position shall serve at the~~
496 ~~pleasure of the chair, and his or her term shall expire on the~~
497 ~~same day as the term of the chair.~~

498 ~~(d) A chair may be immediately removed from office prior to~~
499 ~~the expiration of his or her term by a vote of two-thirds of the~~
500 ~~members of the local council. If any chair is removed from~~
501 ~~office prior to the expiration of his or her term, a replacement~~
502 ~~chair shall be elected during the same meeting, and the term of~~
503 ~~the replacement chair shall begin immediately. The replacement~~
504 ~~chair shall serve for the remainder of the term of the person he~~
505 ~~or she replaced.~~



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506 ~~(7) Each local council shall meet upon the call of its~~
507 ~~chair or upon the call of the ombudsman. Each local council~~
508 ~~shall meet at least once a month but may meet more frequently if~~
509 ~~necessary.~~

510 ~~(6)(8) An ombudsman may not~~ An ombudsman may not ~~A member of a local council~~
511 ~~shall~~ receive ~~no~~ compensation but shall, with approval from the
512 state ombudsman, be reimbursed for travel expenses ~~both within~~
513 ~~and outside the jurisdiction of the local council~~ in accordance
514 with ~~the provisions of~~ s. 112.061.

515 ~~(7)(9) The~~ representatives of the office ~~local councils~~ are
516 authorized to call upon appropriate state agencies ~~of state~~
517 ~~government~~ for ~~such~~ professional assistance as ~~may be~~ needed in
518 the discharge of their duties, and such. ~~All~~ state agencies
519 shall cooperate ~~with the local councils~~ in providing requested
520 information and agency representation ~~at council meetings~~.

521 Section 7. Section 400.0070, Florida Statutes, is amended
522 to read:

523 400.0070 Conflicts of interest.—

524 (1) A representative of the office ~~The ombudsman~~ shall not:

525 (a) Have a direct involvement in the licensing or
526 certification of, or an ownership or investment interest in, a
527 long-term care facility or a provider of a long-term care
528 service.

529 (b) Be employed by, or participate in the management of, a
530 long-term care facility.

531 (c) Receive, or have a right to receive, directly or
532 indirectly, remuneration, in cash or in kind, under a
533 compensation agreement with the owner or operator of a long-term
534 care facility.



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535 (2) Each representative employee of the office, ~~each state~~
536 ~~council member, and each local council member~~ shall certify that
537 he or she has no conflict of interest.

538 (3) The department, in consultation with the state
539 ombudsman, shall define by rule:

540 (a) Situations that constitute an individual's ~~a person~~
541 having a conflict of interest that could materially affect the
542 objectivity or capacity of the individual ~~a person~~ to serve as a
543 representative ~~on an ombudsman council, or as an employee~~ of the
544 office, ~~while carrying out the purposes of the State Long-Term~~
545 ~~Care Ombudsman Program as specified in this part.~~

546 (b) The procedure by which an individual ~~a person~~ listed in
547 subsection (2) shall certify that he or she has no conflict of
548 interest.

549 Section 8. Section 400.0071, Florida Statutes, is amended
550 to read:

551 400.0071 State ~~Long-Term Care~~ ombudsman program complaint
552 procedures.—The department, in consultation with the state
553 ombudsman, shall adopt rules implementing state and local
554 complaint procedures. The rules must include procedures for
555 receiving, investigating, identifying, and resolving complaints
556 concerning the health, safety, welfare, and rights of residents+

557 ~~(1) Receiving complaints against a long-term care facility~~
558 ~~or an employee of a long-term care facility.~~

559 ~~(2) Conducting investigations of a long-term care facility~~
560 ~~or an employee of a long-term care facility subsequent to~~
561 ~~receiving a complaint.~~

562 ~~(3) Conducting onsite administrative assessments of long-~~
563 ~~term care facilities.~~



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564 Section 9. Section 400.0073, Florida Statutes, is amended
565 to read:

566 400.0073 Complaint ~~State and local ombudsman council~~
567 investigations.-

568 (1) A representative of the office ~~local council~~ shall
569 identify and investigate, ~~within a reasonable time after a~~
570 ~~complaint is made,~~ any complaint made by or on behalf of a
571 resident that, ~~a representative of a resident, or any other~~
572 ~~credible source based on an action or omission by an~~
573 ~~administrator, an employee, or a representative of a long-term~~
574 ~~care facility~~ which might be:

575 (a) Contrary to law;

576 (b) Unreasonable, unfair, oppressive, or unnecessarily
577 discriminatory, even though in accordance with law;

578 (c) Based on a mistake of fact;

579 (d) Based on improper or irrelevant grounds;

580 (e) Unaccompanied by an adequate statement of reasons;

581 (f) Performed in an inefficient manner; or

582 (g) Otherwise adversely affecting the health, safety,
583 welfare, or rights of a resident.

584 ~~(2) In an investigation, both the state and local councils~~
585 ~~have the authority to hold public hearings.~~

586 ~~(3) Subsequent to an appeal from a local council, the state~~
587 ~~council may investigate any complaint received by the local~~
588 ~~council involving a long-term care facility or a resident.~~

589 (2) ~~(4)~~ If a representative of the office ~~the ombudsman or~~
590 ~~any state or local council member~~ is not allowed to enter a
591 long-term care facility, the administrator of the facility shall
592 be considered to have interfered with a representative of the



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593 office, ~~the state council, or the local council~~ in the
594 performance of official duties as described in s. 400.0083(1)
595 and to have committed a violation of this part. The
596 representative of the office ~~ombudsman~~ shall report a facility's
597 refusal to allow entry to the facility to the state ombudsman or
598 his or her designee, who shall then report the incident to the
599 agency, and the agency shall record the report and take it into
600 consideration when determining actions allowable under s.
601 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
602 429.71.

603 Section 10. Section 400.0074, Florida Statutes, is amended
604 to read:

605 400.0074 ~~Local ombudsman council~~ Onsite administrative
606 assessments.—

607 (1) A representative of the office must ~~In addition to any~~
608 ~~specific investigation conducted pursuant to a complaint, the~~
609 ~~local council shall~~ conduct, at least annually, an onsite
610 administrative assessment of each nursing home, assisted living
611 facility, and adult family-care home ~~within its jurisdiction.~~
612 This administrative assessment must be resident-centered and
613 must shall focus on factors affecting the rights, health,
614 safety, and welfare of the residents. ~~Each local council is~~
615 ~~encouraged to conduct a similar onsite administrative assessment~~
616 ~~of each additional long-term care facility within its~~
617 ~~jurisdiction.~~

618 (2) An onsite administrative assessment is ~~conducted by a~~
619 ~~local council shall be~~ subject to the following conditions:

620 (a) To the extent possible and reasonable, the
621 administrative assessment ~~assessments~~ shall not duplicate the



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622 efforts of ~~the agency~~ surveys and inspections conducted by state
623 agencies of long-term care facilities under part II of this
624 chapter and parts I and II of chapter 429.

625 (b) An administrative assessment shall be conducted at a
626 time and for a duration necessary to produce the information
627 required to complete the assessment ~~carry out the duties of the~~
628 ~~local council.~~

629 (c) Advance notice of an administrative assessment may not
630 be provided to a long-term care facility, except that notice of
631 followup assessments on specific problems may be provided.

632 (d) A representative of the office ~~local council member~~
633 ~~physically~~ present for the administrative assessment must shall
634 identify himself or herself to the administrator ~~and cite the~~
635 ~~specific statutory authority for his or her assessment of the~~
636 facility or his or her designee.

637 (e) An administrative assessment may not unreasonably
638 interfere with the programs and activities of residents.

639 (f) A representative of the office ~~local council member~~ may
640 not enter a single-family residential unit within a long-term
641 care facility during an administrative assessment without the
642 permission of the resident or the representative of the
643 resident.

644 (g) An administrative assessment must be conducted in a
645 manner that will impose no unreasonable burden on a long-term
646 care facility.

647 ~~(3) Regardless of jurisdiction, the ombudsman may authorize~~
648 ~~a state or local council member to assist another local council~~
649 ~~to perform the administrative assessments described in this~~
650 ~~section.~~



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651 (3)~~(4)~~ An onsite administrative assessment may not be
652 accomplished by forcible entry. However, if a representative of
653 the office ombudsman or a state or local council member is not
654 allowed to enter a long-term care facility, the administrator of
655 the facility shall be considered to have interfered with a
656 representative of the office,~~the state council, or the local~~
657 ~~council~~ in the performance of official duties as described in s.
658 400.0083(1) and to have committed a violation of this part. The
659 representative of the office ombudsman shall report the refusal
660 by a facility to allow entry to the state ombudsman or his or
661 her designee, who shall then report the incident to the agency,
662 and the agency shall record the report and take it into
663 consideration when determining actions allowable under s.
664 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
665 429.71.

666 (4) The department, in consultation with the state
667 ombudsman, may adopt rules implementing procedures for
668 conducting onsite administrative assessments of long-term care
669 facilities.

670 Section 11. Section 400.0075, Florida Statutes, is amended
671 to read:

672 400.0075 Complaint notification and resolution procedures.-

673 (1) (a) Any complaint ~~or problem~~ verified by a
674 representative of the office an ombudsman council as a result of
675 an investigation may or onsite administrative assessment, which
676 ~~complaint or problem is determined to require remedial action by~~
677 ~~the local council,~~ shall be identified and brought to the
678 attention of the long-term care facility administrator subject
679 to the confidentiality provisions of s. 400.0077 in writing.



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680 Upon receipt of the information ~~such document~~, the
681 administrator, with the concurrence of the representative of the
682 office local council chair, shall establish target dates for
683 taking appropriate remedial action. If, by the target date, the
684 remedial action is not completed or forthcoming, the
685 representative may extend the target date if there is reason to
686 believe such action would facilitate the resolution of the
687 complaint, or the representative may refer the complaint to the
688 district manager local council chair may, after obtaining
689 approval from the ombudsman and a majority of the members of the
690 local council:

691 ~~1. Extend the target date if the chair has reason to~~
692 ~~believe such action would facilitate the resolution of the~~
693 ~~complaint.~~

694 ~~2. In accordance with s. 400.0077, publicize the complaint,~~
695 ~~the recommendations of the council, and the response of the~~
696 ~~long-term care facility.~~

697 ~~3. Refer the complaint to the state council.~~

698 (b) If an ombudsman determines the local council chair
699 ~~believes~~ that the health, safety, welfare, or rights of a the
700 resident are in imminent danger, the ombudsman must immediately
701 notify the district manager. The district manager chair shall
702 notify the ombudsman or legal advocate, who, after verifying
703 that such imminent danger exists, must notify the appropriate
704 state agencies, including law enforcement, the state ombudsman,
705 and the legal advocate to ensure the protection of shall seek
706 immediate legal or administrative remedies to protect the
707 resident.

708 (c) If the state ombudsman or legal advocate has reason to



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709 believe that the long-term care facility or an employee of the
710 facility has committed a criminal act, the state ombudsman or
711 legal advocate shall provide the local law enforcement agency
712 with the relevant information to initiate an investigation of
713 the case.

714 (2) ~~(a)~~ Upon referral from a district local council, the
715 state ombudsman or his or her designee council shall assume the
716 responsibility for the disposition of the complaint. If a long-
717 term care facility fails to take action to resolve or remedy the
718 ~~on a~~ complaint ~~by the state council~~, the state ombudsman council
719 may, ~~after obtaining approval from the ombudsman and a majority~~
720 ~~of the state council members~~:

721 (a) ~~1.~~ In accordance with s. 400.0077, publicize the
722 complaint, the recommendations of the representatives of the
723 office local or state council, and the response of the long-term
724 care facility.

725 (b) ~~2.~~ Recommend to the department and the agency a series
726 of facility reviews pursuant to s. 400.19, s. 429.34, or s.
727 429.67 to ensure correction and nonrecurrence of the conditions
728 that gave ~~give~~ rise to the complaint ~~complaints~~ against the a
729 long-term care facility.

730 (c) ~~3.~~ Recommend to the department and the agency that the
731 long-term care facility no longer receive payments under any
732 state assistance program, including Medicaid.

733 (d) ~~4.~~ Recommend to the department and the agency that
734 procedures be initiated for action against ~~revocation of~~ the
735 long-term care facility's license in accordance with chapter
736 120.

737 ~~(b) If the state council chair believes that the health,~~



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738 ~~safety, welfare, or rights of the resident are in imminent~~
739 ~~danger, the chair shall notify the ombudsman or legal advocate,~~
740 ~~who, after verifying that such imminent danger exists, shall~~
741 ~~seek immediate legal or administrative remedies to protect the~~
742 ~~resident.~~

743 (3)(e) If the state ombudsman, after consultation with the
744 legal advocate, has reason to believe that the long-term care
745 facility or an employee of the facility has committed a criminal
746 act, the office ombudsman shall provide local law enforcement
747 with the relevant information to initiate an investigation of
748 the case.

749 Section 12. Section 400.0078, Florida Statutes, is amended
750 to read:

751 400.0078 Citizen access to state ~~Long-Term Care~~ ombudsman
752 program services.—

753 (1) The office shall establish a statewide toll-free
754 telephone number and e-mail address for receiving complaints
755 concerning matters adversely affecting the health, safety,
756 welfare, or rights of residents.

757 (2) ~~Every resident or representative of a resident shall~~
758 ~~receive,~~ Upon admission to a long-term care facility, each
759 resident or representative of a resident must receive
760 information regarding:

761 (a) The purpose of the state ~~Long-Term Care~~ ombudsman
762 program. 7

763 (b) The statewide toll-free telephone number and e-mail
764 address for receiving complaints. 7 ~~and~~

765 (c) Information that retaliatory action cannot be taken
766 against a resident for presenting grievances or for exercising



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767 any other resident rights.

768 (d) Other relevant information regarding how to contact
769 representatives of the office program.

770
771 Residents or their representatives must be furnished additional
772 copies of this information upon request.

773 Section 13. Section 400.0079, Florida Statutes, is amended
774 to read:

775 400.0079 Immunity.—

776 (1) Any person making a complaint pursuant to this part who
777 does so in good faith shall be immune from any liability, civil
778 or criminal, that otherwise might be incurred or imposed as a
779 direct or indirect result of making the complaint.

780 (2) Representatives of the office and ~~The ombudsman or any~~
781 ~~person authorized by the ombudsman to act on behalf of the~~
782 ~~office, as well as all members of the state council and local~~
783 ~~councils,~~ shall be immune from any liability, civil or criminal,
784 that otherwise might be incurred or imposed during the good
785 faith performance of official duties.

786 Section 14. Section 400.0081, Florida Statutes, is amended
787 to read:

788 400.0081 Access to facilities, residents, and records.—

789 (1) A long-term care facility shall provide representatives
790 of the office with, ~~the state council and its members, and the~~
791 ~~local councils and their members access to:~~

792 (a) Access to ~~Any portion of~~ the long-term care facility
793 and residents ~~any resident as necessary to investigate or~~
794 ~~resolve a complaint.~~

795 (b) Appropriate access to medical and social records of a



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796 resident for review ~~as necessary to investigate or resolve a~~
797 ~~complaint~~, if:

798 1. The representative of the office has the permission of
799 the resident or the legal representative of the resident; or

800 2. The resident is unable to consent to the review and has
801 no legal representative.

802 (c) Access to medical and social records of a ~~the~~ resident
803 ~~as necessary to investigate or resolve a complaint~~, if:

804 1. A legal representative or guardian of the resident
805 refuses to give permission;

806 2. A representative of the office has reasonable cause to
807 believe that the legal representative or guardian is not acting
808 in the best interests of the resident; and

809 3. The representative of the office ~~state or local council~~
810 ~~member~~ obtains the approval of the state ombudsman.

811 (d) Access to the administrative records, policies, and
812 documents to which residents or the general public have access.

813 (e) Upon request, copies of all licensing and certification
814 records maintained by the state with respect to a long-term care
815 facility.

816 (2) The department, in consultation with the state
817 ombudsman ~~and the state council~~, may adopt rules to establish
818 procedures to ensure access to facilities, residents, and
819 records as described in this section.

820 Section 15. Section 400.0083, Florida Statutes, is amended
821 to read:

822 400.0083 Interference; retaliation; penalties.—

823 (1) It shall be unlawful for any person, long-term care
824 facility, or other entity to willfully interfere with a



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825 representative of the office or, the state council, ~~or a local~~
826 ~~council~~ in the performance of official duties.

827 (2) It shall be unlawful for any person, long-term care
828 facility, or other entity to knowingly or willfully take action
829 or retaliate against any resident, employee, or other person for
830 filing a complaint with, providing information to, or otherwise
831 cooperating with any representative of the office or, the state
832 council, ~~or a local council~~.

833 (3) Any person, long-term care facility, or other entity
834 that violates this section:

835 (a) Shall be liable for damages and equitable relief as
836 determined by law.

837 (b) Commits a misdemeanor of the second degree, punishable
838 as provided in s. 775.083.

839 Section 16. Section 400.0087, Florida Statutes, is amended
840 to read:

841 400.0087 Department oversight; funding.—

842 (1) The department shall meet the costs associated with the
843 state ~~Long-Term-Care~~ ombudsman program from funds appropriated
844 to it.

845 (a) The department shall include the costs associated with
846 support of the state ~~Long-Term-Care~~ ombudsman program when
847 developing its budget requests for consideration by the Governor
848 and submittal to the Legislature.

849 (b) The department may divert from the federal ombudsman
850 appropriation an amount equal to the department's administrative
851 cost ratio to cover the costs associated with administering the
852 state ombudsman program. The remaining allotment from the Older
853 Americans Act program shall be expended on direct ombudsman



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854 activities.

855 (2) The department shall monitor the office and, the state
856 council, ~~and the local councils~~ to ensure that each is carrying
857 out the duties delegated to it by state and federal law.

858 (3) The department is responsible for ensuring that the
859 office:

860 (a) Has the objectivity and independence required to
861 qualify it for funding under the federal Older Americans Act.

862 (b) Provides information to public and private agencies,
863 legislators, and others.

864 (c) Provides appropriate training to representatives of the
865 office ~~or of the state or local councils~~.

866 (d) Coordinates ombudsman services with Disability Rights
867 Florida ~~the Advocacy Center for Persons with Disabilities~~ and
868 with providers of legal services to residents ~~of long-term care~~
869 ~~facilities~~ in compliance with state and federal laws.

870 (4) The department shall also:

871 (a) Receive and disburse state and federal funds for
872 purposes that the state ombudsman has formulated in accordance
873 with the Older Americans Act.

874 (b) Whenever necessary, act as liaison between agencies and
875 branches of the federal and state governments and the office
876 ~~State Long-Term Care Ombudsman Program~~.

877 Section 17. Section 400.0089, Florida Statutes, is amended
878 to read:

879 400.0089 Complaint data reports.—The office shall maintain
880 a statewide uniform reporting system to collect and analyze data
881 relating to complaints and conditions in long-term care
882 facilities and to residents for the purpose of identifying and



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883 resolving significant complaints ~~problems~~. The office shall
884 publish quarterly and make readily available information
885 pertaining to the number and types of complaints received by the
886 state ~~Long-Term-Care~~ ombudsman program and shall include such
887 information in the annual report required under s. 400.0065.

888 Section 18. Section 400.0091, Florida Statutes, is amended
889 to read:

890 400.0091 Training.—The state ombudsman shall ensure that
891 appropriate training is provided to all representatives
892 ~~employees~~ of the office ~~and to the members of the state and~~
893 ~~local councils~~.

894 (1) All representatives ~~state and local council members and~~
895 ~~employees~~ of the office shall be given a minimum of 20 hours of
896 training upon employment with the office or appointment as an
897 ombudsman. ~~Ten approval as a state or local council member and~~
898 ~~10~~ hours of continuing education are required annually
899 thereafter.

900 (2) The state ombudsman shall approve the curriculum for
901 the initial and continuing education training, which must, at a
902 minimum, address:

- 903 (a) Resident confidentiality.
904 (b) Guardianships and powers of attorney.
905 (c) Medication administration.
906 (d) Care and medication of residents with dementia and
907 Alzheimer's disease.
908 (e) Accounting for residents' funds.
909 (f) Discharge rights and responsibilities.
910 (g) Cultural sensitivity.
911 (h) Any other topic related to residency within a long-term



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912 care facility ~~recommended by the secretary.~~

913 (3) An individual ~~No employee, officer, or representative~~
914 ~~of the office or of the state or local councils,~~ other than the
915 state ombudsman, may not hold himself or herself out as a
916 representative of the office ~~State Long-Term Care Ombudsman~~
917 ~~Program~~ or conduct any authorized program duty described in this
918 part unless the individual ~~person~~ has received the training
919 required by this section and has been certified by the state
920 ombudsman as qualified to carry out ombudsman activities on
921 behalf of the office ~~or the state or local councils.~~

922 Section 19. Subsection (4) of section 20.41, Florida
923 Statutes, is amended to read:

924 20.41 Department of Elderly Affairs.—There is created a
925 Department of Elderly Affairs.

926 (4) The department shall administer the Office of State
927 Long-Term Care Ombudsman ~~Council,~~ created by s. 400.0063
928 ~~400.0067,~~ and the local long-term care ombudsman councils,
929 ~~created by s. 400.0069~~ and shall, as required by s. 712 of the
930 federal Older Americans Act of 1965, ensure that ~~both~~ the state
931 office operates ~~and local long-term care ombudsman councils~~
932 ~~operate~~ in compliance with the Older Americans Act.

933 Section 20. Subsections (11) through (19) of section
934 400.021, Florida Statutes, are renumbered as subsections (10)
935 through (18), respectively, and present subsections (10) and
936 (18) are amended to read:

937 400.021 Definitions.—When used in this part, unless the
938 context otherwise requires, the term:

939 ~~(10) "Local ombudsman council" means a local long-term care~~
940 ~~ombudsman council established pursuant to s. 400.0069, located~~



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941 ~~within the Older Americans Act planning and service areas.~~

942 ~~(17)-(18)~~ "State ombudsman program council" means the Office
943 of State Long-Term Care Ombudsman Council established pursuant
944 to s. 400.0063 ~~400.0067~~.

945 Section 21. Paragraph (c) of subsection (1) and subsections
946 (2) and (3) of section 400.022, Florida Statutes, are amended to
947 read:

948 400.022 Residents' rights.—

949 (1) All licensees of nursing home facilities shall adopt
950 and make public a statement of the rights and responsibilities
951 of the residents of such facilities and shall treat such
952 residents in accordance with the provisions of that statement.
953 The statement shall assure each resident the following:

954 (c) Any entity or individual that provides health, social,
955 legal, or other services to a resident has the right to have
956 reasonable access to the resident. The resident has the right to
957 deny or withdraw consent to access at any time by any entity or
958 individual. Notwithstanding the visiting policy of the facility,
959 the following individuals must be permitted immediate access to
960 the resident:

961 1. Any representative of the federal or state government,
962 including, but not limited to, representatives of the Department
963 of Children and Family Services, the Department of Health, the
964 Agency for Health Care Administration, the Office of the
965 Attorney General, and the Department of Elderly Affairs; any law
966 enforcement officer; representatives ~~members~~ of the state ~~or~~
967 ~~local~~ ombudsman program council; and the resident's individual
968 physician.

969 2. Subject to the resident's right to deny or withdraw



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970 consent, immediate family or other relatives of the resident.

971

972 The facility must allow representatives of the state ~~Long-Term~~
973 ~~Care~~ ombudsman program Council to examine a resident's clinical
974 records with the permission of the resident or the resident's
975 legal representative and consistent with state law.

976 (2) The licensee for each nursing home shall orally inform
977 the resident of the resident's rights and provide a copy of the
978 statement required by subsection (1) to each resident or the
979 resident's legal representative at or before the resident's
980 admission to a facility. The licensee shall provide a copy of
981 the resident's rights to each staff member of the facility. Each
982 such licensee shall prepare a written plan and provide
983 appropriate staff training to implement ~~the provisions of this~~
984 section. The written statement of rights must include a
985 statement that a resident may file a complaint with the agency
986 or state local ombudsman program council. The statement must be
987 in boldfaced type and shall include the ~~name, address, and~~
988 telephone number and e-mail address of the state numbers of the
989 local ombudsman program council and the telephone number of the
990 central abuse hotline where complaints may be lodged.

991 (3) Any violation of the resident's rights set forth in
992 this section shall constitute grounds for action by the agency
993 under ~~the provisions of~~ s. 400.102, s. 400.121, or part II of
994 chapter 408. In order to determine whether the licensee is
995 adequately protecting residents' rights, the licensure
996 inspection of the facility shall include private informal
997 conversations with a sample of residents to discuss residents'
998 experiences within the facility with respect to rights specified



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999 in this section and general compliance with standards, and
1000 consultation with the state ombudsman program ~~council in the~~
1001 ~~local planning and service area of the Department of Elderly~~
1002 ~~Affairs in which the nursing home is located.~~

1003 Section 22. Subsections (8) and (9) and (11) through (14)
1004 of section 400.0255, Florida Statutes, are amended to read:

1005 400.0255 Resident transfer or discharge; requirements and
1006 procedures; hearings.—

1007 (8) The notice required by subsection (7) must be in
1008 writing and must contain all information required by state and
1009 federal law, rules, or regulations applicable to Medicaid or
1010 Medicare cases. The agency shall develop a standard document to
1011 be used by all facilities licensed under this part for purposes
1012 of notifying residents of a discharge or transfer. Such document
1013 must include a means for a resident to request the state ~~local~~
1014 ~~long-term care~~ ombudsman program ~~council~~ to review the notice
1015 and request information about or assistance with initiating a
1016 fair hearing with the department's Office of Appeals Hearings.
1017 In addition to any other pertinent information included, the
1018 form shall specify the reason allowed under federal or state law
1019 that the resident is being discharged or transferred, with an
1020 explanation to support this action. Further, the form shall
1021 state the effective date of the discharge or transfer and the
1022 location to which the resident is being discharged or
1023 transferred. The form shall clearly describe the resident's
1024 appeal rights and the procedures for filing an appeal, including
1025 the right to request the state ~~local~~ ombudsman program ~~council~~
1026 to review the notice of discharge or transfer. A copy of the
1027 notice must be placed in the resident's clinical record, and a



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1028 copy must be transmitted to the resident's legal guardian or
1029 representative and to the state ~~local~~ ombudsman program ~~council~~
1030 within 5 business days after signature by the resident or
1031 resident designee.

1032 (9) A resident may request that the state ~~local~~ ombudsman
1033 program ~~council~~ review any notice of discharge or transfer given
1034 to the resident. When requested by a resident to review a notice
1035 of discharge or transfer, the state ~~local~~ ombudsman program
1036 ~~council~~ shall do so within 7 days after receipt of the request.
1037 The nursing home administrator, or the administrator's designee,
1038 must forward the request for review contained in the notice to
1039 the state ~~local~~ ombudsman program ~~council~~ within 24 hours after
1040 such request is submitted. Failure to forward the request within
1041 24 hours after the request is submitted shall toll the running
1042 of the 30-day advance notice period until the request has been
1043 forwarded.

1044 (11) Notwithstanding paragraph (10) (b), an emergency
1045 discharge or transfer may be implemented as necessary pursuant
1046 to state or federal law during the period of time after the
1047 notice is given and before the time a hearing decision is
1048 rendered. Notice of an emergency discharge or transfer to the
1049 resident, the resident's legal guardian or representative, and
1050 the state ~~local~~ ombudsman program ~~council~~ if requested pursuant
1051 to subsection (9) must be by telephone or in person. This notice
1052 shall be given before the transfer, if possible, or as soon
1053 thereafter as practicable. A representative of the state ~~local~~
1054 ombudsman program ~~council~~ conducting a review under this
1055 subsection shall do so within 24 hours after receipt of the
1056 request. The resident's file must be documented to show who was



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1057 contacted, whether the contact was by telephone or in person,
1058 and the date and time of the contact. If the notice is not given
1059 in writing, written notice meeting the requirements of
1060 subsection (8) must be given the next working day.

1061 (12) After receipt of any notice required under this
1062 section, the state local ombudsman program council may request a
1063 private informal conversation with a resident to whom the notice
1064 is directed, and, if known, a family member or the resident's
1065 legal guardian or designee, to ensure that the facility is
1066 proceeding with the discharge or transfer in accordance with ~~the~~
1067 ~~requirements of~~ this section. If requested, the state local
1068 ombudsman program council shall assist the resident with filing
1069 an appeal of the proposed discharge or transfer.

1070 (13) The following persons must be present at all hearings
1071 authorized under this section:

1072 (a) The resident, or the resident's legal representative or
1073 designee.

1074 (b) The facility administrator, or the facility's legal
1075 representative or designee.

1076
1077 A representative of the state local long-term care ombudsman
1078 program council may be present at all hearings authorized by
1079 this section.

1080 (14) In any hearing under this section, the following
1081 information concerning the parties shall be confidential and
1082 exempt from ~~the provisions of~~ s. 119.07(1):

1083 (a) Names and addresses.

1084 (b) Medical services provided.

1085 (c) Social and economic conditions or circumstances.



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- 1086 (d) Evaluation of personal information.
- 1087 (e) Medical data, including diagnosis and past history of
1088 disease or disability.
- 1089 (f) Any information received verifying income eligibility
1090 and amount of medical assistance payments. Income information
1091 received from the Social Security Administration or the Internal
1092 Revenue Service must be safeguarded according to the
1093 requirements of the agency that furnished the data.

1094

1095 The exemption created by this subsection does not prohibit
1096 access to such information by the state ombudsman program ~~a~~
1097 ~~local long-term care ombudsman council~~ upon request, by a
1098 reviewing court if such information is required to be part of
1099 the record upon subsequent review, or as specified in s. 24(a),
1100 Art. I of the State Constitution.

1101 Section 23. Subsection (2) of section 400.1413, Florida
1102 Statutes, is amended to read:

1103 400.1413 Volunteers in nursing homes.-

1104 (2) This section does not affect the activities of the
1105 ~~state or local long-term care ombudsman program councils~~
1106 authorized under part I.

1107 Section 24. Paragraph (d) of subsection (5) of section
1108 400.162, Florida Statutes, is amended to read:

1109 400.162 Property and personal affairs of residents.-

1110 (5)

1111 (d) If, at any time during the period for which a license
1112 is issued, a licensee that has not purchased a surety bond or
1113 entered into a self-insurance agreement, as provided in
1114 paragraphs (b) and (c), is requested to provide safekeeping for



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1115 the personal funds of a resident, the licensee shall notify the
1116 agency of the request and make application for a surety bond or
1117 for participation in a self-insurance agreement within 7 days
1118 after ~~of~~ the request, exclusive of weekends and holidays. Copies
1119 of the application, along with written documentation of related
1120 correspondence with an insurance agency or group, shall be
1121 maintained by the licensee for review by the agency and the
1122 state ~~Nursing Home and Long-Term Care Facility~~ ombudsman program
1123 Council.

1124 Section 25. Subsections (1) and (4) of section 400.19,
1125 Florida Statutes, are amended to read:

1126 400.19 Right of entry and inspection.-

1127 (1) In accordance with part II of chapter 408, the agency
1128 and any duly designated officer or employee thereof or a
1129 representative ~~member~~ of the state ~~Long-Term Care~~ ombudsman
1130 program ~~Council or the local long-term care ombudsman council~~
1131 ~~shall~~ have the right to enter upon and into the premises of any
1132 facility licensed pursuant to this part, or any distinct nursing
1133 home unit of a hospital licensed under chapter 395 or any
1134 freestanding facility licensed under chapter 395 that provides
1135 extended care or other long-term care services, at any
1136 reasonable time in order to determine the state of compliance
1137 with ~~the provisions of~~ this part, part II of chapter 408, and
1138 applicable rules in force pursuant thereto. The agency shall,
1139 within 60 days after receipt of a complaint made by a resident
1140 or resident's representative, complete its investigation and
1141 provide to the complainant its findings and resolution.

1142 (4) The agency shall conduct unannounced onsite facility
1143 reviews following written verification of licensee noncompliance



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1144 in instances in which the state ombudsman program ~~a long-term~~
1145 ~~care ombudsman council~~, pursuant to ss. 400.0071 and 400.0075,
1146 has received a complaint and has documented deficiencies in
1147 resident care or in the physical plant of the facility that
1148 threaten the health, safety, or security of residents, or when
1149 the agency documents through inspection that conditions in a
1150 facility present a direct or indirect threat to the health,
1151 safety, or security of residents. However, the agency shall
1152 conduct unannounced onsite reviews every 3 months of each
1153 facility while the facility has a conditional license.
1154 Deficiencies related to physical plant do not require followup
1155 reviews after the agency has determined that correction of the
1156 deficiency has been accomplished and that the correction is of
1157 the nature that continued compliance can be reasonably expected.

1158 Section 26. Subsection (1) of section 400.191, Florida
1159 Statutes, is amended to read:

1160 400.191 Availability, distribution, and posting of reports
1161 and records.—

1162 (1) The agency shall provide information to the public
1163 about all of the licensed nursing home facilities operating in
1164 the state. The agency shall, within 60 days after a licensure
1165 inspection visit or within 30 days after any interim visit to a
1166 facility, send copies of the inspection reports to the state
1167 ~~local long-term care ombudsman program council~~, the agency's
1168 local office, and a public library or the county seat for the
1169 county in which the facility is located. The agency may provide
1170 electronic access to inspection reports as a substitute for
1171 sending copies.

1172 Section 27. Subsection (6) and paragraph (c) of subsection



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1173 (7) of section 400.23, Florida Statutes, is amended to read:

1174 400.23 Rules; evaluation and deficiencies; licensure
1175 status.—

1176 (6) Before ~~Prior to~~ conducting a survey of the facility,
1177 the survey team shall obtain a copy of the state local long-term
1178 ~~care~~ ombudsman program ~~council~~ report on the facility. Problems
1179 noted in the report shall be incorporated into and followed up
1180 through the agency's inspection process. This procedure does not
1181 preclude the state local long-term care ombudsman program
1182 ~~council~~ from requesting the agency to conduct a followup visit
1183 to the facility.

1184 (7) The agency shall, at least every 15 months, evaluate
1185 all nursing home facilities and make a determination as to the
1186 degree of compliance by each licensee with the established rules
1187 adopted under this part as a basis for assigning a licensure
1188 status to that facility. The agency shall base its evaluation on
1189 the most recent inspection report, taking into consideration
1190 findings from other official reports, surveys, interviews,
1191 investigations, and inspections. In addition to license
1192 categories authorized under part II of chapter 408, the agency
1193 shall assign a licensure status of standard or conditional to
1194 each nursing home.

1195 (c) In evaluating the overall quality of care and services
1196 and determining whether the facility will receive a conditional
1197 or standard license, the agency shall consider the needs and
1198 limitations of residents in the facility and the results of
1199 interviews and surveys of a representative sampling of
1200 residents, families of residents, representatives of the state
1201 ombudsman program ~~council members in the planning and service~~



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1202 ~~area in which the facility is located~~, guardians of residents,
1203 and staff of the nursing home facility.

1204 Section 28. Paragraph (a) of subsection (3), paragraph (f)
1205 of subsection (5), and subsection (6) of section 400.235,
1206 Florida Statutes, are amended to read:

1207 400.235 Nursing home quality and licensure status; Gold
1208 Seal Program.—

1209 (3) (a) The Gold Seal Program shall be developed and
1210 implemented by the Governor's Panel on Excellence in Long-Term
1211 Care which shall operate under the authority of the Executive
1212 Office of the Governor. The panel shall be composed of three
1213 persons appointed by the Governor, to include a consumer
1214 advocate for senior citizens and two persons with expertise in
1215 the fields of quality management, service delivery excellence,
1216 or public sector accountability; three persons appointed by the
1217 Secretary of Elderly Affairs, to include an active member of a
1218 nursing facility family and resident care council and a member
1219 of the University Consortium on Aging; a representative of the
1220 Office of State Long-Term Care Ombudsman; one person appointed
1221 by the Florida Life Care Residents Association; one person
1222 appointed by the State Surgeon General; two persons appointed by
1223 the Secretary of Health Care Administration; one person
1224 appointed by the Florida Association of Homes for the Aging; and
1225 one person appointed by the Florida Health Care Association.
1226 Vacancies on the panel shall be filled in the same manner as the
1227 original appointments.

1228 (5) Facilities must meet the following additional criteria
1229 for recognition as a Gold Seal Program facility:

1230 (f) Evidence an outstanding record regarding the number and



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1231 types of substantiated complaints reported to the Office of
1232 State Long-Term Care Ombudsman ~~Council~~ within the 30 months
1233 preceding application for the program.

1234
1235 A facility assigned a conditional licensure status may not
1236 qualify for consideration for the Gold Seal Program until after
1237 it has operated for 30 months with no class I or class II
1238 deficiencies and has completed a regularly scheduled relicensure
1239 survey.

1240 (6) The agency, nursing facility industry organizations,
1241 consumers, Office of State Long-Term Care Ombudsman ~~Council~~, and
1242 members of the community may recommend to the Governor
1243 facilities that meet the established criteria for consideration
1244 for and award of the Gold Seal. The panel shall review nominees
1245 and make a recommendation to the Governor for final approval and
1246 award. The decision of the Governor is final and is not subject
1247 to appeal.

1248 Section 29. Paragraph (a) of subsection (1) of section
1249 415.1034, Florida Statutes, is amended to read:

1250 415.1034 Mandatory reporting of abuse, neglect, or
1251 exploitation of vulnerable adults; mandatory reports of death.—

1252 (1) MANDATORY REPORTING.—

1253 (a) Any person, including, but not limited to, any:

1254 1. Physician, osteopathic physician, medical examiner,
1255 chiropractic physician, nurse, paramedic, emergency medical
1256 technician, or hospital personnel engaged in the admission,
1257 examination, care, or treatment of vulnerable adults;

1258 2. Health professional or mental health professional other
1259 than one listed in subparagraph 1.;



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1260 3. Practitioner who relies solely on spiritual means for
1261 healing;

1262 4. Nursing home staff; assisted living facility staff;
1263 adult day care center staff; adult family-care home staff;
1264 social worker; or other professional adult care, residential, or
1265 institutional staff;

1266 5. State, county, or municipal criminal justice employee or
1267 law enforcement officer;

1268 6. ~~An~~ Employee of the Department of Business and
1269 Professional Regulation conducting inspections of public lodging
1270 establishments under s. 509.032;

1271 7. Florida advocacy council member or representative of the
1272 Office of State Long-Term Care Ombudsman ~~council member~~; or

1273 8. Bank, savings and loan, or credit union officer,
1274 trustee, or employee,
1275
1276 who knows, or has reasonable cause to suspect, that a vulnerable
1277 adult has been or is being abused, neglected, or exploited shall
1278 immediately report such knowledge or suspicion to the central
1279 abuse hotline.

1280 Section 30. Subsection (1) of section 415.104, Florida
1281 Statutes, is amended to read:

1282 415.104 Protective investigations of cases of abuse,
1283 neglect, or exploitation of vulnerable adults; transmittal of
1284 records to state attorney.-

1285 (1) The department shall, upon receipt of a report alleging
1286 abuse, neglect, or exploitation of a vulnerable adult, begin
1287 within 24 hours a protective investigation of the facts alleged
1288 therein. If a caregiver refuses to allow the department to begin



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1289 a protective investigation or interferes with the conduct of
1290 such an investigation, the appropriate law enforcement agency
1291 shall be contacted for assistance. If, during the course of the
1292 investigation, the department has reason to believe that the
1293 abuse, neglect, or exploitation is perpetrated by a second
1294 party, the appropriate law enforcement agency and state attorney
1295 shall be orally notified. The department and the law enforcement
1296 agency shall cooperate to allow the criminal investigation to
1297 proceed concurrently with, and not be hindered by, the
1298 protective investigation. The department shall make a
1299 preliminary written report to the law enforcement agencies
1300 within 5 working days after the oral report. The department
1301 shall, within 24 hours after receipt of the report, notify the
1302 appropriate Florida local advocacy council, or state long-term
1303 ~~care~~ ombudsman program ~~council~~, when appropriate, that an
1304 alleged abuse, neglect, or exploitation perpetrated by a second
1305 party has occurred. Notice to the Florida local advocacy council
1306 or state long-term care ombudsman program ~~council~~ may be
1307 accomplished orally or in writing and shall include the name and
1308 location of the vulnerable adult alleged to have been abused,
1309 neglected, or exploited and the nature of the report.

1310 Section 31. Subsection (8) of section 415.1055, Florida
1311 Statutes, is amended to read:

1312 415.1055 Notification to administrative entities.—

1313 (8) At the conclusion of a protective investigation at a
1314 facility, the department shall notify either the Florida local
1315 advocacy council or state long-term care ombudsman program
1316 ~~council~~ of the results of the investigation. This notification
1317 must be in writing.



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1318 Section 32. Subsection (2) of section 415.106, Florida
1319 Statutes, is amended to read:

1320 415.106 Cooperation by the department and criminal justice
1321 and other agencies.—

1322 (2) To ensure coordination, communication, and cooperation
1323 with the investigation of abuse, neglect, or exploitation of
1324 vulnerable adults, the department shall develop and maintain
1325 interprogram agreements or operational procedures among
1326 appropriate departmental programs and the Office of State Long-
1327 Term Care Ombudsman Council, the Florida Statewide Advocacy
1328 Council, and other agencies that provide services to vulnerable
1329 adults. These agreements or procedures must cover such subjects
1330 as the appropriate roles and responsibilities of the department
1331 in identifying and responding to reports of abuse, neglect, or
1332 exploitation of vulnerable adults; the provision of services;
1333 and related coordinated activities.

1334 Section 33. Paragraph (g) of subsection (3) of section
1335 415.107, Florida Statutes, is amended to read:

1336 415.107 Confidentiality of reports and records.—

1337 (3) Access to all records, excluding the name of the
1338 reporter which shall be released only as provided in subsection
1339 (6), shall be granted only to the following persons, officials,
1340 and agencies:

1341 (g) Any appropriate official of the Florida advocacy
1342 council or state long-term care ombudsman program council
1343 investigating a report of known or suspected abuse, neglect, or
1344 exploitation of a vulnerable adult.

1345 Section 34. Subsection (20) of section 429.02, Florida
1346 Statutes, is amended to read:



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1347 429.02 Definitions.—When used in this part, the term:
1348 (20) “Resident’s representative or designee” means a person
1349 other than the owner, or an agent or employee of the facility,
1350 designated in writing by the resident, if legally competent, to
1351 receive notice of changes in the contract executed pursuant to
1352 s. 429.24; to receive notice of and to participate in meetings
1353 between the resident and the facility owner, administrator, or
1354 staff concerning the rights of the resident; to assist the
1355 resident in contacting the state ombudsman program council if
1356 the resident has a complaint against the facility; or to bring
1357 legal action on behalf of the resident pursuant to s. 429.29.

1358 Section 35. Paragraph (b) of subsection (3) of section
1359 429.07, Florida Statutes, is amended to read:

1360 429.07 License required; fee.—

1361 (3) In addition to the requirements of s. 408.806, each
1362 license granted by the agency must state the type of care for
1363 which the license is granted. Licenses shall be issued for one
1364 or more of the following categories of care: standard, extended
1365 congregate care, limited nursing services, or limited mental
1366 health.

1367 (b) An extended congregate care license shall be issued to
1368 facilities providing, directly or through contract, services
1369 beyond those authorized in paragraph (a), including services
1370 performed by persons licensed under part I of chapter 464 and
1371 supportive services, as defined by rule, to persons who would
1372 otherwise be disqualified from continued residence in a facility
1373 licensed under this part.

1374 1. In order for extended congregate care services to be
1375 provided, the agency must first determine that all requirements



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1376 established in law and rule are met and must specifically
1377 designate, on the facility's license, that such services may be
1378 provided and whether the designation applies to all or part of
1379 the facility. Such designation may be made at the time of
1380 initial licensure or relicensure, or upon request in writing by
1381 a licensee under this part and part II of chapter 408. The
1382 notification of approval or the denial of the request shall be
1383 made in accordance with part II of chapter 408. Existing
1384 facilities qualifying to provide extended congregate care
1385 services must have maintained a standard license and may not
1386 have been subject to administrative sanctions during the
1387 previous 2 years, or since initial licensure if the facility has
1388 been licensed for less than 2 years, for any of the following
1389 reasons:

1390 a. A class I or class II violation;

1391 b. Three or more repeat or recurring class III violations
1392 of identical or similar resident care standards from which a
1393 pattern of noncompliance is found by the agency;

1394 c. Three or more class III violations that were not
1395 corrected in accordance with the corrective action plan approved
1396 by the agency;

1397 d. Violation of resident care standards which results in
1398 requiring the facility to employ the services of a consultant
1399 pharmacist or consultant dietitian;

1400 e. Denial, suspension, or revocation of a license for
1401 another facility licensed under this part in which the applicant
1402 for an extended congregate care license has at least 25 percent
1403 ownership interest; or

1404 f. Imposition of a moratorium pursuant to this part or part



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1405 II of chapter 408 or initiation of injunctive proceedings.
1406 2. A facility that is licensed to provide extended
1407 congregate care services shall maintain a written progress
1408 report on each person who receives services which describes the
1409 type, amount, duration, scope, and outcome of services that are
1410 rendered and the general status of the resident's health. A
1411 registered nurse, or appropriate designee, representing the
1412 agency shall visit the facility at least quarterly to monitor
1413 residents who are receiving extended congregate care services
1414 and to determine whether ~~if~~ the facility is in compliance with
1415 this part, part II of chapter 408, and relevant rules. One of
1416 the visits may be in conjunction with the regular survey. The
1417 monitoring visits may be provided through contractual
1418 arrangements with appropriate community agencies. A registered
1419 nurse shall serve as part of the team that inspects the
1420 facility. The agency may waive one of the required yearly
1421 monitoring visits for a facility that has been licensed for at
1422 least 24 months to provide extended congregate care services,
1423 if, during the inspection, the registered nurse determines that
1424 extended congregate care services are being provided
1425 appropriately, and if the facility has no class I or class II
1426 violations and no uncorrected class III violations. The agency
1427 must first consult with the state ~~long-term care~~ ombudsman
1428 program council for the area in which the facility is located to
1429 determine whether ~~if~~ any complaints have been made and
1430 substantiated about the quality of services or care. The agency
1431 may not waive one of the required yearly monitoring visits if
1432 complaints have been made and substantiated.
1433 3. A facility that is licensed to provide extended



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1434 congregate care services must:

1435 a. Demonstrate the capability to meet unanticipated
1436 resident service needs.

1437 b. Offer a physical environment that promotes a homelike
1438 setting, provides for resident privacy, promotes resident
1439 independence, and allows sufficient congregate space as defined
1440 by rule.

1441 c. Have sufficient staff available, taking into account the
1442 physical plant and firesafety features of the building, to
1443 assist with the evacuation of residents in an emergency.

1444 d. Adopt and follow policies and procedures that maximize
1445 resident independence, dignity, choice, and decisionmaking to
1446 permit residents to age in place, so that moves due to changes
1447 in functional status are minimized or avoided.

1448 e. Allow residents or, if applicable, a resident's
1449 representative, designee, surrogate, guardian, or attorney in
1450 fact to make a variety of personal choices, participate in
1451 developing service plans, and share responsibility in
1452 decisionmaking.

1453 f. Implement the concept of managed risk.

1454 g. Provide, directly or through contract, the services of a
1455 person licensed under part I of chapter 464.

1456 h. In addition to the training mandated in s. 429.52,
1457 provide specialized training as defined by rule for facility
1458 staff.

1459 4. A facility that is licensed to provide extended
1460 congregate care services is exempt from the criteria for
1461 continued residency set forth in rules adopted under s. 429.41.
1462 A licensed facility must adopt its own requirements within



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1463 guidelines for continued residency set forth by rule. However,
1464 the facility may not serve residents who require 24-hour nursing
1465 supervision. A licensed facility that provides extended
1466 congregate care services must also provide each resident with a
1467 written copy of facility policies governing admission and
1468 retention.

1469 5. The primary purpose of extended congregate care services
1470 is to allow residents, as they become more impaired, the option
1471 of remaining in a familiar setting from which they would
1472 otherwise be disqualified for continued residency. A facility
1473 licensed to provide extended congregate care services may also
1474 admit an individual who exceeds the admission criteria for a
1475 facility with a standard license, if the individual is
1476 determined appropriate for admission to the extended congregate
1477 care facility.

1478 6. Before the admission of an individual to a facility
1479 licensed to provide extended congregate care services, the
1480 individual must undergo a medical examination as provided in s.
1481 429.26(4) and the facility must develop a preliminary service
1482 plan for the individual.

1483 7. When a facility can no longer provide or arrange for
1484 services in accordance with the resident's service plan and
1485 needs and the facility's policy, the facility shall make
1486 arrangements for relocating the person in accordance with s.
1487 429.28(1)(k).

1488 8. Failure to provide extended congregate care services may
1489 result in denial of extended congregate care license renewal.

1490 Section 36. Subsection (9) of section 429.19, Florida
1491 Statutes, is amended to read:



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1492 429.19 Violations; imposition of administrative fines;
1493 grounds.—

1494 (9) The agency shall develop and disseminate an annual list
1495 of all facilities sanctioned or fined for violations of state
1496 standards, the number and class of violations involved, the
1497 penalties imposed, and the current status of cases. The list
1498 shall be disseminated, at no charge, to the Department of
1499 Elderly Affairs, the Department of Health, the Department of
1500 Children and Families ~~Family Services~~, the Agency for Persons
1501 with Disabilities, the area agencies on aging, the Florida
1502 Statewide Advocacy Council, and the state ~~and local~~ ombudsman
1503 program councils. The Department of Children and Families ~~Family~~
1504 ~~Services~~ shall disseminate the list to service providers under
1505 contract to the department who are responsible for referring
1506 persons to a facility for residency. The agency may charge a fee
1507 commensurate with the cost of printing and postage to other
1508 interested parties requesting a copy of this list. This
1509 information may be provided electronically or through the
1510 agency's Internet site.

1511 Section 37. Subsection (8) of section 429.26, Florida
1512 Statutes, is amended to read:

1513 429.26 Appropriateness of placements; examinations of
1514 residents.—

1515 (8) The Department of Children and Families ~~Family Services~~
1516 may require an examination for supplemental security income and
1517 optional state supplementation recipients residing in facilities
1518 at any time and shall provide the examination whenever a
1519 resident's condition requires it. Any facility administrator;
1520 personnel of the agency, the department, or the Department of



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1521 Children and Families ~~Family Services~~; or representative of the
1522 state long-term care ombudsman program ~~council member~~ who
1523 believes a resident needs to be evaluated shall notify the
1524 resident's case manager, who shall take appropriate action. A
1525 report of the examination findings shall be provided to the
1526 resident's case manager and the facility administrator to help
1527 the administrator meet his or her responsibilities under
1528 subsection (1).

1529 Section 38. Subsection (2) and paragraph (b) of subsection
1530 (3) of section 429.28, Florida Statutes, are amended to read:

1531 429.28 Resident bill of rights.-

1532 (2) The administrator of a facility shall ensure that a
1533 written notice of the rights, obligations, and prohibitions set
1534 forth in this part is posted in a prominent place in each
1535 facility and read or explained to residents who cannot read.
1536 This notice shall include the statewide toll-free telephone
1537 number and e-mail address ~~name, address, and telephone numbers~~
1538 of the state local ombudsman program ~~council~~ and central abuse
1539 hotline and, when applicable, the Advocacy Center for Persons
1540 with Disabilities, Inc., and the Florida local advocacy council,
1541 where complaints may be lodged. The facility must ensure a
1542 resident's access to a telephone to call the state local
1543 ombudsman program ~~council~~, central abuse hotline, Advocacy
1544 Center for Persons with Disabilities, Inc., and the Florida
1545 local advocacy council.

1546 (3)

1547 (b) In order to determine whether the facility is
1548 adequately protecting residents' rights, the biennial survey
1549 shall include private informal conversations with a sample of



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1550 residents and consultation with the state ombudsman program
1551 ~~council~~ in the planning and service area in which the facility
1552 is located to discuss residents' experiences within the
1553 facility.

1554 Section 39. Section 429.34, Florida Statutes, is amended to
1555 read:

1556 429.34 Right of entry and inspection.—In addition to the
1557 requirements of s. 408.811, any duly designated officer or
1558 employee of the department, the Department of Children and
1559 Families ~~Family Services~~, the Medicaid Fraud Control Unit of the
1560 Office of the Attorney General, the state or local fire marshal,
1561 or a representative member of the state ~~or local long-term care~~
1562 ombudsman program ~~has council shall have~~ the right to enter
1563 unannounced upon and into the premises of any facility licensed
1564 pursuant to this part in order to determine the state of
1565 compliance with ~~the provisions of~~ this part, part II of chapter
1566 408, and applicable rules. Data collected by the state ~~or local~~
1567 ~~long-term care~~ ombudsman program ~~councils~~ or the state or local
1568 advocacy councils may be used by the agency in investigations
1569 involving violations of regulatory standards.

1570 Section 40. Subsection (2) of section 429.35, Florida
1571 Statutes, is amended to read:

1572 429.35 Maintenance of records; reports.—

1573 (2) Within 60 days after the date of the biennial
1574 inspection visit required under s. 408.811 or within 30 days
1575 after the date of any interim visit, the agency shall forward
1576 the results of the inspection to the state ~~local~~ ombudsman
1577 program ~~council in whose planning and service area, as defined~~
1578 ~~in part II of chapter 400, the facility is located;~~ to at least



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1579 one public library or, in the absence of a public library, the
1580 county seat in the county in which the inspected assisted living
1581 facility is located; and, when appropriate, to the district
1582 Adult Services and Mental Health Program Offices.

1583 Section 41. Subsection (2) of section 429.85, Florida
1584 Statutes, is amended to read:

1585 429.85 Residents' bill of rights.—

1586 (2) The provider shall ensure that residents and their
1587 legal representatives are made aware of the rights, obligations,
1588 and prohibitions set forth in this part. Residents must also be
1589 given the statewide toll-free telephone number and e-mail
1590 address of the state ombudsman program and the telephone number
1591 of names, addresses, and telephone numbers of the local
1592 ~~ombudsman council~~ and the central abuse hotline where they may
1593 lodge complaints.

1594 Section 42. Subsection (17) of section 744.444, Florida
1595 Statutes, is amended to read:

1596 744.444 Power of guardian without court approval.—Without
1597 obtaining court approval, a plenary guardian of the property, or
1598 a limited guardian of the property within the powers granted by
1599 the order appointing the guardian or an approved annual or
1600 amended guardianship report, may:

1601 (17) Provide confidential information about a ward that is
1602 related to an investigation arising under part I of chapter 400
1603 to a representative of the local or state ombudsman program
1604 ~~council member~~ conducting such an investigation. Any such
1605 ombudsman has ~~shall have~~ a duty to maintain the confidentiality
1606 of such information.

1607 Section 43. This act shall take effect July 1, 2013.



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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to the state ombudsman program;
amending s. 400.0060, F.S.; revising and providing
definitions; amending s. 400.0061, F.S.; revising
legislative intent with respect to citizen ombudsmen;
deleting references to ombudsman councils and
transferring their responsibilities to representatives
of the Office of State Long-Term Care Ombudsman;
amending s. 400.0063, F.S.; revising duties of the
office; amending s. 400.0065, F.S.; revising the
purpose of the Office of State Long-Term Care
Ombudsman; establishing districts; requiring the state
ombudsman to submit an annual report to the Governor,
the Legislature, and specified agencies and entities;
amending s. 400.0067, F.S.; revising duties and
membership of the State Long-Term Care Ombudsman
Council; amending s. 400.0069, F.S.; requiring the
state ombudsman to designate and direct program
districts; providing duties of representatives of the
office in the districts; providing for appointment and
qualifications of district ombudsmen; prohibiting
certain individuals from serving as ombudsmen;
amending s. 400.0070, F.S.; providing conditions under
which a representative of the office could be found to



1637 have a conflict of interest; amending s. 400.0071,
1638 F.S.; requiring the Department of Elderly Affairs to
1639 consult with the state ombudsman before adopting rules
1640 pertaining to complaint resolution; amending s.
1641 400.0073, F.S.; providing procedures for investigation
1642 of complaints; amending s. 400.0074, F.S.; revising
1643 procedures for conducting onsite administrative
1644 assessments; authorizing the department to adopt
1645 rules; amending s. 400.0075, F.S.; revising complaint
1646 notification and resolution procedures; amending s.
1647 400.0078, F.S.; providing for a resident or
1648 representative of a resident to receive additional
1649 information regarding resident rights; amending s.
1650 400.0079, F.S.; providing immunity from liability for
1651 a representative of the office under certain
1652 circumstances; amending s. 400.0081, F.S.; requiring
1653 long-term care facilities to provide representatives
1654 of the office with access to facilities, residents,
1655 and records for certain purposes; amending s.
1656 400.0083, F.S.; conforming provisions to changes made
1657 by the act; amending s. 400.0087, F.S.; providing for
1658 the office to coordinate ombudsman services with
1659 Disability Rights Florida; amending s. 400.0089, F.S.;
1660 conforming provisions to changes made by the act;
1661 amending s. 400.0091, F.S.; revising training
1662 requirements for representatives of the office and
1663 ombudsmen; amending ss. 20.41, 400.021, 400.022,
1664 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23,
1665 400.235, 415.1034, 415.104, 415.1055, 415.106,



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1666 415.107, 429.02, 429.07, 429.19, 429.26, 429.28,
1667 429.34, 429.35, 429.85, and 744.444, F.S.; conforming
1668 provisions to changes made by the act; providing an
1669 effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2013	.	
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	.	

The Committee on Children, Families, and Elder Affairs (Sobel) recommended the following:

Senate Amendment to Amendment (819690)

Delete lines 106 - 110
and insert:

(b) The state ombudsman shall be appointed by ~~and shall~~
~~serve at the pleasure of~~ the Secretary of Elderly Affairs from a
list of names submitted by the State Ombudsman Council.
Candidates must ~~The secretary shall appoint a person who has~~
have expertise and experience in the fields of long-term care
and advocacy to serve as state ombudsman. The Secretary may
remove the State Ombudsman only after consulting with the State
Ombudsman Council and after a vote of two-thirds of all state



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13

council members is attained.

By Senator Soto

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1 A bill to be entitled
 2 An act relating to the state ombudsman program;
 3 amending s. 400.0060, F.S.; revising and providing
 4 definitions; amending s. 400.0061, F.S.; revising
 5 legislative intent with respect to citizen ombudsmen;
 6 deleting references to ombudsman councils and
 7 transferring their responsibilities to representatives
 8 of the Office of State Long-Term Care Ombudsman;
 9 amending s. 400.0063, F.S.; revising duties of the
 10 office; amending s. 400.0065, F.S.; reorganizing local
 11 ombudsman councils; establishing districts; requiring
 12 the state ombudsman to submit an annual report to the
 13 Governor, the Legislature, and specified agencies and
 14 entities; amending s. 400.0067, F.S.; providing duties
 15 of the State Long-Term Care Ombudsman Advisory
 16 Council; providing for membership, terms, and
 17 meetings; amending s. 400.0069, F.S.; requiring the
 18 state ombudsman to designate and direct program
 19 districts; providing duties of representatives of the
 20 office in the districts; authorizing a representative
 21 of the office to enter a facility without notice and
 22 without a warrant; providing for appointment and
 23 qualifications of district ombudsmen; prohibiting
 24 certain individuals from serving as ombudsmen;
 25 amending s. 400.0070, F.S.; providing conditions under
 26 which a representative of the office could be found to
 27 have a conflict of interest; amending s. 400.0071,
 28 F.S.; requiring the Department of Elderly Affairs to
 29 consult with the state ombudsman before adopting rules

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30 pertaining to complaint resolution; amending s.
 31 400.0073, F.S.; providing procedures for investigation
 32 of complaints; amending s. 400.0074, F.S.; revising
 33 procedures for conducting onsite administrative
 34 assessments; authorizing the department to adopt
 35 rules; amending s. 400.0075, F.S.; revising complaint
 36 notification and resolution procedures; amending s.
 37 400.0078, F.S.; providing for a resident or
 38 representative of a resident to receive additional
 39 information regarding resident rights; amending s.
 40 400.0079, F.S.; providing immunity from liability for
 41 a representative of the office under certain
 42 circumstances; amending s. 400.0081, F.S.; requiring
 43 long-term care facilities to provide representatives
 44 of the office with access to facilities, residents,
 45 and records for certain purposes; amending s.
 46 400.0083, F.S.; conforming provisions to changes made
 47 by the act; amending s. 400.0087, F.S.; providing for
 48 the office to coordinate ombudsman services with
 49 Disability Rights Florida; amending s. 400.0089, F.S.;
 50 conforming provisions to changes made by the act;
 51 amending s. 400.0091, F.S.; revising training
 52 requirements for representatives of the office and
 53 ombudsmen; amending ss. 20.41, 400.021, 400.022,
 54 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23,
 55 400.235, 415.1034, 415.104, 415.1055, 415.106,
 56 415.107, 429.02, 429.07, 429.19, 429.26, 429.28,
 57 429.34, 429.35, 429.85, and 744.444, F.S.; conforming
 58 provisions to changes made by the act; providing an

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59 effective date.

60

61 Be It Enacted by the Legislature of the State of Florida:

62

63 Section 1. Section 400.0060, Florida Statutes, is amended
64 to read:

65 400.0060 Definitions.—When used in this part, unless the
66 context clearly dictates otherwise, the term:

67 (1) "Administrative assessment" means a review of
68 conditions in a long-term care facility which impact the rights,
69 health, safety, and welfare of residents with the purpose of
70 noting needed improvement and making recommendations to enhance
71 the quality of life for residents.

72 (2) "Agency" means the Agency for Health Care
73 Administration.

74 (3) "Department" means the Department of Elderly Affairs.

75 (4) "District" means a geographical area designated by the
76 state ombudsman in which individuals certified as ombudsmen
77 carry out the duties of the state ombudsman program. ~~"Local
78 council" means a local long-term care ombudsman council
79 designated by the ombudsman pursuant to s. 400.0069. Local
80 councils are also known as district long-term care ombudsman
81 councils or district councils.~~

82 (5) "Long-term care facility" means a nursing home
83 facility, assisted living facility, adult family-care home,
84 board and care facility, facility where continuing long-term
85 care is provided, or any other similar residential adult care
86 facility.

87 (6) "Office" means the Office of State Long-Term Care

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88 Ombudsman created by s. 400.0063.

89 (7) "Ombudsman" means an individual who has been certified
90 by the state ombudsman as meeting the requirements of ss.
91 400.0069, 400.0070, and 400.0091 ~~the individual appointed by the~~
92 ~~Secretary of Elderly Affairs to head the Office of State Long-~~
93 ~~Term Care Ombudsman.~~

94 (8) "Representative of the office" means the state
95 ombudsman, employees of the office, and individuals certified as
96 ombudsmen.

97 (9) ~~(8)~~ "Resident" means an individual 60 years of age or
98 older who resides in a long-term care facility.

99 (10) ~~(9)~~ "Secretary" means the Secretary of Elderly Affairs.

100 (11) ~~(10)~~ "State council" means the State Long-Term Care
101 Ombudsman Advisory Council created by s. 400.0067.

102 (12) "State ombudsman" means the individual appointed by
103 the Secretary of Elderly Affairs to head the Office of State
104 Long-Term Care Ombudsman.

105 (13) "State ombudsman program" means the program operating
106 under the direction of the office.

107 Section 2. Section 400.0061, Florida Statutes, is amended
108 to read:

109 400.0061 Legislative findings and intent; long-term care
110 facilities.—

111 (1) The Legislature finds that conditions in long-term care
112 facilities in this state are such that the rights, health,
113 safety, and welfare of residents are not fully ensured by rules
114 of the Department of Elderly Affairs or the Agency for Health
115 Care Administration or by the good faith of owners or operators
116 of long-term care facilities. Furthermore, there is a need for a

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117 formal mechanism whereby a long-term care facility resident, a
 118 representative of a long-term care facility resident, or any
 119 other concerned citizen may make a complaint against the
 120 facility or its employees, or against other persons who are in a
 121 position to restrict, interfere with, or threaten the rights,
 122 health, safety, or welfare of a long-term care facility
 123 resident. The Legislature finds that concerned citizens are
 124 often more effective advocates for the rights of others than
 125 governmental agencies. The Legislature further finds that in
 126 order to be eligible to receive an allotment of funds authorized
 127 and appropriated under the federal Older Americans Act, the
 128 state must establish and operate an Office of State Long-Term
 129 Care Ombudsman, to be headed by the state Long-Term Care
 130 ombudsman, and carry out a state long-term care ombudsman
 131 program.

132 (2) It is the intent of the Legislature, therefore, to
 133 utilize voluntary citizen ombudsmen ~~ombudsman councils~~ under the
 134 leadership of the state ombudsman, and, through them, to operate
 135 a state ~~a~~ ombudsman program, which shall, without interference
 136 by any executive agency, undertake to discover, investigate, and
 137 determine the presence of conditions or individuals that ~~which~~
 138 constitute a threat to the rights, health, safety, or welfare of
 139 the residents of long-term care facilities. To ensure that the
 140 effectiveness and efficiency of such investigations are not
 141 impeded by advance notice or delay, the Legislature intends that
 142 representatives of the office ~~the ombudsman and ombudsman~~
 143 ~~councils and their designated representatives~~ not be required to
 144 obtain warrants in order to enter into or conduct investigations
 145 or onsite administrative assessments of long-term care

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146 facilities. It is the further intent of the Legislature that the
 147 environment in long-term care facilities be conducive to the
 148 dignity and independence of residents and that investigations by
 149 representatives of the office ~~ombudsman councils~~ shall further
 150 the enforcement of laws, rules, and regulations that safeguard
 151 the health, safety, and welfare of residents.

152 Section 3. Section 400.0063, Florida Statutes, is amended
 153 to read:

154 400.0063 Establishment of Office of State Long-Term Care
 155 Ombudsman; designation of ombudsman and legal advocate.—

156 (1) There is created an Office of State Long-Term Care
 157 Ombudsman in the Department of Elderly Affairs.

158 (2) (a) The Office of State Long-Term Care Ombudsman shall
 159 be headed by the state Long-Term Care ombudsman, who shall serve
 160 on a full-time basis and shall personally, or through
 161 representatives of the office, carry out the purposes and
 162 functions of the state ombudsman program ~~office~~ in accordance
 163 with state and federal law.

164 (b) The state ombudsman shall be appointed by and shall
 165 serve at the pleasure of the Secretary of Elderly Affairs. The
 166 secretary shall appoint a person who has expertise and
 167 experience in the fields of long-term care and advocacy to serve
 168 as state ombudsman.

169 (3) (a) There is created in the office the position of legal
 170 advocate, who shall be selected by and serve at the pleasure of
 171 the state ombudsman and shall be a member in good standing of
 172 The Florida Bar.

173 (b) The duties of the legal advocate shall include, but not
 174 be limited to:

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175 1. Assisting the state ombudsman in carrying out the duties
176 of the office with respect to the abuse, neglect, exploitation,
177 or violation of rights of residents of long-term care
178 facilities.

179 2. Assisting the state council and representatives of the
180 office ~~local councils~~ in carrying out their responsibilities
181 under this part.

182 3. Pursuing administrative, legal, and other appropriate
183 remedies on behalf of residents.

184 4. Serving as legal counsel to the state council and
185 representatives of the office ~~local councils, or individual~~
186 ~~members thereof~~, against whom any suit or other legal action is
187 initiated in connection with the performance of the official
188 duties of the state ombudsman program ~~councils or an individual~~
189 ~~member~~.

190 Section 4. Section 400.0065, Florida Statutes, is amended
191 to read:

192 400.0065 Office of State Long-Term Care Ombudsman; duties
193 and responsibilities.—

194 (1) The purpose of the Office of State Long-Term Care
195 Ombudsman shall be to:

196 (a) Identify, investigate, and resolve complaints made by
197 or on behalf of residents of long-term care facilities relating
198 to actions or omissions by providers or representatives of
199 providers of long-term care services, other public or private
200 agencies, guardians, or representative payees that may adversely
201 affect the health, safety, welfare, or rights of the residents.

202 (b) Provide services that assist in protecting the health,
203 safety, welfare, and rights of residents.

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204 (c) Inform residents, their representatives, and other
205 citizens about obtaining the services of the state ~~Long-Term~~
206 ~~Care~~ ombudsman program and its representatives.

207 (d) Ensure that residents have regular and timely access to
208 the services provided through the office and that residents and
209 complainants receive timely responses from representatives of
210 the office to their complaints.

211 (e) Represent the interests of residents before
212 governmental agencies and seek administrative, legal, and other
213 remedies to protect the health, safety, welfare, and rights of
214 the residents.

215 (f) Administer the state council ~~and local councils~~.

216 (g) Analyze, comment on, and monitor the development and
217 implementation of federal, state, and local laws, rules, and
218 regulations, and other governmental policies and actions, that
219 pertain to the health, safety, welfare, and rights of the
220 residents, with respect to the adequacy of long-term care
221 facilities and services in the state, and recommend any changes
222 in such laws, rules, regulations, policies, and actions as the
223 office determines to be appropriate and necessary.

224 (h) Provide technical support for the development of
225 resident and family councils to protect the well-being and
226 rights of residents.

227 (2) The state ~~Long-Term Care~~ ombudsman shall have the duty
228 and authority to:

229 (a) Establish and coordinate districts ~~local councils~~
230 throughout the state.

231 (b) Perform the duties specified in state and federal law,
232 rules, and regulations.

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233 (c) Within the limits of appropriated federal and state
 234 funding, employ such personnel as are necessary to perform
 235 adequately the functions of the office and provide or contract
 236 for legal services to assist the state council and
 237 representatives of the office ~~local councils~~ in the performance
 238 of their duties. ~~Staff positions established for the purpose of~~
 239 ~~coordinating the activities of each local council and assisting~~
 240 ~~its members may be filled by the ombudsman after approval by the~~
 241 ~~secretary. Notwithstanding any other provision of this part,~~
 242 ~~upon certification by the ombudsman that the staff member hired~~
 243 ~~to fill any such position has completed the initial training~~
 244 ~~required under s. 400.0091, such person shall be considered a~~
 245 ~~representative of the State Long-Term Care Ombudsman Program for~~
 246 ~~purposes of this part.~~

247 (d) Contract for services necessary to carry out the
 248 activities of the office.

249 (e) Apply for, receive, and accept grants, gifts, or other
 250 payments, including, but not limited to, real property, personal
 251 property, and services from a governmental entity or other
 252 public or private entity or person, and make arrangements for
 253 the use of such grants, gifts, or payments.

254 (f) Coordinate, to the greatest extent possible, state and
 255 local ombudsman services with the protection and advocacy
 256 systems for individuals with developmental disabilities and
 257 mental illnesses and with legal assistance programs for the poor
 258 through adoption of memoranda of understanding and other means.

259 ~~(g) Enter into a cooperative agreement with the Statewide~~
 260 ~~Advocacy Council for the purpose of coordinating and avoiding~~
 261 ~~duplication of advocacy services provided to residents.~~

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262 ~~(g) (h)~~ Enter into a cooperative agreement with the Medicaid
 263 Fraud Division as prescribed under s. 731(e) (2) (B) of the Older
 264 Americans Act.

265 ~~(h) (i)~~ Prepare an annual report describing the activities
 266 carried out by the office, the state council, and the districts
 267 ~~local councils~~ in the year for which the report is prepared. The
 268 state ombudsman shall submit the report to the secretary, the
 269 United States Assistant Secretary for Aging, the Governor, the
 270 President of the Senate, the Speaker of the House of
 271 Representatives, the Secretary of Children and Families, and the
 272 Secretary of Health Care Administration at least 30 days before
 273 the convening of the regular session of the Legislature. The
 274 ~~secretary shall in turn submit the report to the United States~~
 275 ~~Assistant Secretary for Aging, the Governor, the President of~~
 276 ~~the Senate, the Speaker of the House of Representatives, the~~
 277 ~~Secretary of Children and Family Services, and the Secretary of~~
 278 ~~Health Care Administration.~~ The report shall, at a minimum:

279 1. Contain and analyze data collected concerning complaints
 280 about and conditions in long-term care facilities and the
 281 disposition of such complaints.

282 2. Evaluate the problems experienced by residents.

283 3. Analyze the successes of the state ombudsman program
 284 during the preceding year, including an assessment of how
 285 successfully the office program has carried out its
 286 responsibilities under the Older Americans Act.

287 4. Provide recommendations for policy, regulatory, and
 288 statutory changes designed to solve identified problems; resolve
 289 residents' complaints; improve residents' lives and quality of
 290 care; protect residents' rights, health, safety, and welfare;

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291 and remove any barriers to the optimal operation of the state
292 ~~Long-Term Care~~ ombudsman program.

293 5. Contain recommendations from the state ~~Long-Term Care~~
294 ~~Ombudsman~~ council regarding program functions and activities and
295 recommendations for policy, regulatory, and statutory changes
296 designed to protect residents' rights, health, safety, and
297 welfare.

298 6. Contain any relevant recommendations from
299 representatives of the office ~~the local councils~~ regarding
300 program functions and activities.

301 Section 5. Section 400.0067, Florida Statutes, is amended
302 to read:

303 400.0067 State Long-Term Care Ombudsman Advisory Council;
304 duties; membership.—

305 (1) There is created, within the Office of State Long-Term
306 Care Ombudsman, the State Long-Term Care Ombudsman Advisory
307 Council.

308 (2) The state ~~Long-Term Care Ombudsman~~ council shall:

309 (a) Serve as an advisory body to assist the state ombudsman
310 in developing strategies for recruitment, recognition, and
311 retention of ombudsmen ~~reaching a consensus among local councils~~
312 ~~on issues affecting residents and impacting the optimal~~
313 ~~operation of the program.~~

314 (b) Assist the state ombudsman in developing long-range
315 strategies and goals for the state ombudsman program. ~~Serve as~~
316 ~~an appellate body in receiving from the local councils~~
317 ~~complaints not resolved at the local level. Any individual~~
318 ~~member or members of the state council may enter any long-term~~
319 ~~care facility involved in an appeal, pursuant to the conditions~~

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320 ~~specified in s. 400.0074(2).~~

321 (c) Assist the state ombudsman by analyzing and commenting
322 on the development and implementation of laws, rules, and
323 regulations impacting the health, safety, welfare, and rights of
324 residents to discover, investigate, and determine the existence
325 of abuse or neglect in any long-term care facility, and work
326 with the adult protective services program as required in ss.
327 415.101-415.113.

328 ~~(d) Assist the ombudsman in eliciting, receiving,~~
329 ~~responding to, and resolving complaints made by or on behalf of~~
330 ~~residents.~~

331 ~~(d)(e) Solicit~~ Elicit and coordinate state, local, and
332 ~~voluntary organizational~~ assistance for the purpose of improving
333 the care received by residents as requested by the state
334 ombudsman.

335 ~~(f) Assist the ombudsman in preparing the annual report~~
336 ~~described in s. 400.0065.~~

337 (3) ~~(a) The state Long-Term Care Ombudsman~~ council shall be
338 composed of:

339 1. A certified ombudsman from each region of the state and
340 two at-large certified ombudsmen ~~one active local council member~~
341 ~~elected by each local council plus three at-large members~~
342 ~~appointed by the Governor.~~

343 2. Three long-term care facility administrators or
344 providers of long-term care services, each representing a
345 nursing home, an assisted living facility, and an adult family
346 care home.

347 3. One resident of a long-term care facility or a family
348 member of a resident of a long-term care facility.

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349 4. One attorney in good standing with The Florida Bar who
 350 has experience in elder law, guardianship, long-term care
 351 facility regulation, or another relevant area.

352 5. One physician, physician's assistant, advanced
 353 registered nurse practitioner, or registered nurse who has
 354 experience with geriatric patients.

355 6. One licensed pharmacist.

356 7. One registered dietician or nutritionist.

357 8. One clinical social worker licensed under chapter 491
 358 with experience in providing mental health counseling or one
 359 mental health counselor as defined in s. 394.455.

360 9. One executive director of an area agency on aging.

361 10. One at-large member.

362 ~~(a) Each local council shall elect by majority vote a~~
 363 ~~representative from among the council members to represent the~~
 364 ~~interests of the local council on the state council. A local~~
 365 ~~council chair may not serve as the representative of the local~~
 366 ~~council on the state council.~~

367 (b)1. The state ombudsman secretary, after consulting with
 368 ~~the ombudsman~~, shall submit to the secretary Governor a list of
 369 individuals persons recommended for appointment to the at-large
 370 positions on the state council. The list shall not include the
 371 ~~name of any person who is currently serving on a local council.~~

372 2. The secretary Governor shall appoint three at-large
 373 members chosen from the list.

374 3. If the secretary Governor does not appoint a an-at-large
 375 member to fill a vacant position within 60 days after the list
 376 is submitted, the state ombudsman secretary, after consulting
 377 with the ~~ombudsman~~, shall appoint a an-at-large member to fill

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378 that vacant position.

379 4. The state council may perform its duties even if one or
 380 more positions are vacant.

381 ~~(4) (a) (e) 1. All~~ State council members shall serve 3-year
 382 terms.

383 ~~2. A member of the state council may not serve more than~~
 384 ~~two consecutive terms.~~

385 ~~3. A local council may recommend removal of its elected~~
 386 ~~representative from the state council by a majority vote. If the~~
 387 ~~council votes to remove its representative, the local council~~
 388 ~~chair shall immediately notify the ombudsman. The secretary~~
 389 ~~shall advise the Governor of the local council's vote upon~~
 390 ~~receiving notice from the ombudsman.~~

391 ~~(b) 4-~~ The position of any member missing 50 percent or more
 392 of the three state council meetings within a 1-year period
 393 without cause may be declared vacant by the state ombudsman. The
 394 findings of the state ombudsman regarding cause shall be final
 395 and binding.

396 ~~(c) 5-~~ Any vacancy on the state council shall be filled in
 397 the same manner as the original appointment.

398 ~~(d) 1. The state council shall elect a chair to serve for a~~
 399 ~~term of 1 year. A chair may not serve more than two consecutive~~
 400 ~~terms.~~

401 ~~2. The chair shall select a vice chair from among the~~
 402 ~~members. The vice chair shall preside over the state council in~~
 403 ~~the absence of the chair.~~

404 ~~3. The chair may create additional executive positions as~~
 405 ~~necessary to carry out the duties of the state council. Any~~
 406 ~~person appointed to an executive position shall serve at the~~

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407 ~~pleasure of the chair, and his or her term shall expire on the~~
 408 ~~same day as the term of the chair.~~

409 ~~4. A chair may be immediately removed from office prior to~~
 410 ~~the expiration of his or her term by a vote of two-thirds of all~~
 411 ~~state council members present at any meeting at which a quorum~~
 412 ~~is present. If a chair is removed from office prior to the~~
 413 ~~expiration of his or her term, a replacement chair shall be~~
 414 ~~chosen during the same meeting in the same manner as described~~
 415 ~~in this paragraph, and the term of the replacement chair shall~~
 416 ~~begin immediately. The replacement chair shall serve for the~~
 417 ~~remainder of the term and is eligible to serve two subsequent~~
 418 ~~consecutive terms.~~

419 ~~(d)(e)1.~~ The state council shall meet upon the call of the
 420 ~~state chair or upon the call of the~~ ombudsman. The council shall
 421 meet at least twice yearly quarterly but may meet more
 422 frequently as needed.

423 ~~2. A quorum shall be considered present if more than 50~~
 424 ~~percent of all active state council members are in attendance at~~
 425 ~~the same meeting.~~

426 ~~3. The state council may not vote on or otherwise make any~~
 427 ~~decisions resulting in a recommendation that will directly~~
 428 ~~impact the state council or any local council, outside of a~~
 429 ~~publicly noticed meeting at which a quorum is present.~~

430 ~~(e)(f)~~ Members shall receive no compensation but may shall,
 431 with approval from the state ombudsman, be reimbursed for per
 432 diem and travel expenses as provided in s. 112.061.

433 Section 6. Section 400.0069, Florida Statutes, is amended
 434 to read:

435 400.0069 ~~Local~~ Long-term care ombudsman districts councils;

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436 ~~duties; appointment membership.~~

437 (1) (a) The state ombudsman shall designate districts local
 438 ~~long-term care ombudsman councils~~ to carry out the duties of the
 439 state ~~Long-Term Care~~ ombudsman program ~~within local communities.~~
 440 Each district local council shall function under the direction
 441 of the state ombudsman.

442 (b) The state ombudsman shall ensure that there are
 443 representatives of the office ~~is at least one local council~~
 444 ~~operating in each district of the department's planning and~~
 445 ~~service areas. The ombudsman may create additional local~~
 446 ~~councils as necessary to ensure that residents throughout the~~
 447 ~~state have adequate access to state Long-Term Care ombudsman~~
 448 ~~program services. The ombudsman, after approval from the~~
 449 ~~secretary, shall designate the jurisdictional boundaries of each~~
 450 ~~local council.~~

451 (2) The duties of the representatives of the office in the
 452 districts local councils are to:

453 (a) Provide services to assist in ~~Serve as a third-party~~
 454 ~~mechanism for~~ protecting the health, safety, welfare, and ~~civil~~
 455 ~~and human rights of residents.~~

456 (b) Discover, investigate, and determine the existence of
 457 abuse, or neglect, or exploitation using in any long-term care
 458 ~~facility and to use the procedures provided for in ss. 415.101-~~
 459 ~~415.113 when applicable.~~

460 (c) Identify Elicit, receive, investigate, ~~respond to,~~ and
 461 resolve complaints made by or on behalf of residents relating to
 462 actions or omissions by providers or representatives of
 463 providers of long-term care services, other public or private
 464 agencies, guardians, representative payees, or other individuals

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465 that may adversely affect the health, safety, welfare, or rights
466 of residents.

467 (d) When directed by the state ombudsman, review and, ~~if~~
468 ~~necessary,~~ comment on all existing or proposed rules,
469 regulations, and other governmental policies and actions
470 relating to long-term care facilities that may potentially have
471 an effect on the rights, health, safety, and welfare of
472 residents.

473 (e) Review personal property and money accounts of
474 residents who are receiving assistance under the Medicaid
475 program pursuant to an investigation to obtain information
476 regarding a specific complaint ~~or problem.~~

477 (f) Recommend that the state ombudsman and the legal
478 advocate seek administrative, legal, and other remedies to
479 protect the health, safety, welfare, and rights of ~~the~~
480 residents.

481 (g) Provide technical assistance for the development of
482 resident and family councils within long-term care facilities.

483 ~~(h)~~ (g) Carry out other activities that the state ombudsman
484 determines to be appropriate.

485 (3) In order to carry out the duties specified in
486 subsection (2), a representative of the office may ~~member of a~~
487 ~~local council is authorized to~~ enter any long-term care facility
488 without notice or without first obtaining a warrant; ~~however,~~
489 ~~subject to the provisions of s. 400.0074(2) may apply regarding~~
490 notice of a followup administrative assessment.

491 (4) Each district local council shall be composed of
492 ombudsmen members whose primary residences are ~~residence is~~
493 located within the boundaries of the district local council's

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494 ~~jurisdiction.~~

495 (a) Upon good cause shown, the state ombudsman, in his or
496 her sole discretion, may appoint an ombudsman to another
497 district. ~~The ombudsman shall strive to ensure that each local~~
498 ~~council include the following persons as members:~~

499 ~~1. At least one medical or osteopathic physician whose~~
500 ~~practice includes or has included a substantial number of~~
501 ~~geriatric patients and who may practice in a long-term care~~
502 ~~facility;~~

503 ~~2. At least one registered nurse who has geriatric~~
504 ~~experience;~~

505 ~~3. At least one licensed pharmacist;~~

506 ~~4. At least one registered dietitian;~~

507 ~~5. At least six nursing home residents or representative~~
508 ~~consumer advocates for nursing home residents;~~

509 ~~6. At least three residents of assisted living facilities~~
510 ~~or adult family-care homes or three representative consumer~~
511 ~~advocates for alternative long-term care facility residents;~~

512 ~~7. At least one attorney; and~~

513 ~~8. At least one professional social worker.~~

514 (b) The following individuals may not be appointed as
515 ombudsmen:

516 1. The owner or representative of a long-term care
517 facility.

518 2. A provider or representative of a provider of long-term
519 care services.

520 3. An employee of the agency.

521 4. An employee of the department, except for
522 representatives of the office.

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- 523 5. An employee of the Department of Children and Families.
 524 6. An employee of the Agency for Persons with Disabilities.

525 ~~In no case shall the medical director of a long-term care~~
 526 ~~facility or an employee of the agency, the department, the~~
 527 ~~Department of Children and Family Services, or the Agency for~~
 528 ~~Persons with Disabilities serve as a member or as an ex-officio~~
 529 ~~member of a council.~~

530 (5) (a) To be appointed as an ombudsman, an individual must:
 531 1. Individuals wishing to join a local council shall Submit
 532 an application to the state ombudsman or designee.

533 2. Successfully complete level 2 background screening
 534 pursuant to s. 430.0402 and chapter 435. The ombudsman shall
 535 review the individual's application and advise the secretary of
 536 his or her recommendation for approval or disapproval of the
 537 candidate's membership on the local council. If the secretary
 538 approves of the individual's membership, the individual shall be
 539 appointed as a member of the local council.

540 (b) The state ombudsman shall approve or deny the
 541 appointment of the individual as an ombudsman. The secretary may
 542 rescind the ombudsman's approval of a member on a local council
 543 at any time. If the secretary rescinds the approval of a member
 544 on a local council, the ombudsman shall ensure that the
 545 individual is immediately removed from the local council on
 546 which he or she serves and the individual may no longer
 547 represent the State Long-Term Care Ombudsman Program until the
 548 secretary provides his or her approval.

549 (c) Upon appointment as an ombudsman, the individual may
 550 participate in district activities but may not represent the
 551 office or conduct any authorized program duties until the

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552 individual has completed the initial training specified in s.
 553 400.0091(1) and has been certified by the state ombudsman.

554 (d) The state ombudsman, for good cause shown, may rescind
 555 the appointment of an individual as an ombudsman. After
 556 rescinding the appointment, the individual may not conduct any
 557 duties as an ombudsman and may not represent the office or the
 558 state ombudsman program. A local council may recommend the
 559 removal of one or more of its members by submitting to the
 560 ombudsman a resolution adopted by a two-thirds vote of the
 561 members of the council stating the name of the member or members
 562 recommended for removal and the reasons for the recommendation.
 563 If such a recommendation is adopted by a local council, the
 564 local council chair or district coordinator shall immediately
 565 report the council's recommendation to the ombudsman. The
 566 ombudsman shall review the recommendation of the local council
 567 and advise the secretary of his or her recommendation regarding
 568 removal of the council member or members.

569 (6) (a) Each local council shall elect a chair for a term of
 570 1 year. There shall be no limitation on the number of terms that
 571 an approved member of a local council may serve as chair.

572 (b) The chair shall select a vice chair from among the
 573 members of the council. The vice chair shall preside over the
 574 council in the absence of the chair.

575 (c) The chair may create additional executive positions as
 576 necessary to carry out the duties of the local council. Any
 577 person appointed to an executive position shall serve at the
 578 pleasure of the chair, and his or her term shall expire on the
 579 same day as the term of the chair.

580 (d) A chair may be immediately removed from office prior to

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 581 ~~the expiration of his or her term by a vote of two thirds of the~~
 582 ~~members of the local council. If any chair is removed from~~
 583 ~~office prior to the expiration of his or her term, a replacement~~
 584 ~~chair shall be elected during the same meeting, and the term of~~
 585 ~~the replacement chair shall begin immediately. The replacement~~
 586 ~~chair shall serve for the remainder of the term of the person he~~
 587 ~~or she replaced.~~

~~(7) Each local council shall meet upon the call of its~~
 588 ~~chair or upon the call of the ombudsman. Each local council~~
 589 ~~shall meet at least once a month but may meet more frequently if~~
 590 ~~necessary.~~

(6)(8) An ombudsman ~~A member of a local council~~ shall
 592 receive no compensation but may shall, with approval from the
 593 state ombudsman, be reimbursed for travel expenses ~~both within~~
 594 ~~and outside the jurisdiction of the local council~~ in accordance
 595 with ~~the provisions of s. 112.061.~~

(7)(9) The representatives of the office ~~local councils~~ are
 597 authorized to call upon appropriate state agencies ~~of state~~
 598 ~~government~~ for such professional assistance as ~~may be~~ needed in
 599 the discharge of their duties, and such. ~~All~~ state agencies
 600 shall cooperate ~~with the local councils~~ in providing requested
 601 information and agency representation ~~at council meetings.~~

Section 7. Section 400.0070, Florida Statutes, is amended
 603 to read:

400.0070 Conflicts of interest.—

(1) A representative of the office ~~The ombudsman~~ shall not:

(a) Have a direct involvement in the licensing or
 607 certification of, or an ownership or investment interest in, a
 608 long-term care facility or a provider of a long-term care
 609

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 610 service.

611 (b) Be employed by, or participate in the management of, a
 612 long-term care facility.

613 (c) Receive, or have a right to receive, directly or
 614 indirectly, remuneration, in cash or in kind, under a
 615 compensation agreement with the owner or operator of a long-term
 616 care facility.

(2) Each representative ~~employee~~ of the office, ~~each state~~
 617 ~~council member, and each local council member~~ shall certify that
 618 he or she has no conflict of interest.

(3) The department, in consultation with the state
 620 ombudsman, shall define by rule:

(a) Situations that constitute an individual's a person
 622 having a conflict of interest that could materially affect the
 623 objectivity or capacity of the individual a person to serve as a
 624 representative on an ombudsman council, or as an employee of the
 625 office, ~~while carrying out the purposes of the State Long-Term~~
 626 ~~Care Ombudsman Program as specified in this part.~~

(b) The procedure by which an individual a person listed in
 628 subsection (2) shall certify that he or she has no conflict of
 629 interest.

Section 8. Section 400.0071, Florida Statutes, is amended
 631 to read:

400.0071 State ~~Long-Term Care~~ ombudsman program complaint
 633 procedures.—The department, in consultation with the state
 634 ombudsman, shall adopt rules implementing state and local
 635 complaint procedures. The rules must include procedures for
 636 receiving, investigating, and resolving complaints concerning
 637 the health, safety, welfare, and rights of residents+
 638

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639 ~~(1) Receiving complaints against a long-term care facility~~
640 ~~or an employee of a long-term care facility.~~

641 ~~(2) Conducting investigations of a long-term care facility~~
642 ~~or an employee of a long-term care facility subsequent to~~
643 ~~receiving a complaint.~~

644 ~~(3) Conducting onsite administrative assessments of long-~~
645 ~~term care facilities.~~

646 Section 9. Section 400.0073, Florida Statutes, is amended
647 to read:

648 400.0073 Complaint State and local ombudsman council
649 investigations.-

650 (1) A representative of the office local council shall
651 identify and investigate, within a reasonable time after a
652 complaint is made, any complaint made by or on behalf of a
653 resident that, a representative of a resident, or any other
654 credible source based on an action or omission by an
655 administrator, an employee, or a representative of a long-term
656 care facility which might be:

- 657 (a) Contrary to law;
- 658 (b) Unreasonable, unfair, oppressive, or unnecessarily
- 659 discriminatory, even though in accordance with law;
- 660 (c) Based on a mistake of fact;
- 661 (d) Based on improper or irrelevant grounds;
- 662 (e) Unaccompanied by an adequate statement of reasons;
- 663 (f) Performed in an inefficient manner; or
- 664 (g) Otherwise adversely affecting the health, safety,
- 665 welfare, or rights of a resident.

666 ~~(2) In an investigation, both the state and local councils~~
667 ~~have the authority to hold public hearings.~~

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668 ~~(3) Subsequent to an appeal from a local council, the state~~
669 ~~council may investigate any complaint received by the local~~
670 ~~council involving a long-term care facility or a resident.~~

671 (2)(4) If a representative of the office the ombudsman or
672 any state or local council member is not allowed to enter a
673 long-term care facility, the administrator of the facility shall
674 be considered to have interfered with a representative of the
675 office, the state council, or the local council in the
676 performance of official duties as described in s. 400.0083(1)
677 and to have committed a violation of this part. The
678 representative of the office ombudsman shall report a facility's
679 refusal to allow entry to the facility to the state ombudsman or
680 designee, who shall then report the incident to the agency, and
681 the agency shall record the report and take it into
682 consideration when determining actions allowable under s.
683 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
684 429.71.

685 Section 10. Section 400.0074, Florida Statutes, is amended
686 to read:

687 400.0074 Local ombudsman council Onsite administrative
688 assessments.-

689 (1) Representatives of the office must ~~In addition to any~~
690 ~~specific investigation conducted pursuant to a complaint, the~~
691 ~~local council shall~~ conduct, at least annually, an onsite
692 administrative assessment of each nursing home, assisted living
693 facility, and adult family-care home ~~within its jurisdiction.~~
694 This administrative assessment must be resident-centered and
695 must shall focus on factors affecting the rights, health,
696 safety, and welfare of the residents. ~~Each local council is~~

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697 ~~encouraged to conduct a similar onsite administrative assessment~~
698 ~~of each additional long-term care facility within its~~
699 ~~jurisdiction.~~

700 (2) An onsite administrative assessment ~~is conducted by a~~
701 ~~local council shall be~~ subject to the following conditions:

702 (a) To the extent possible and reasonable, the
703 administrative ~~assessment~~ assessments shall not duplicate the
704 efforts of ~~the agency~~ surveys and inspections conducted by state
705 agencies in long-term care facilities under part II of this
706 chapter and parts I and II of chapter 429.

707 (b) An administrative assessment shall be conducted at a
708 time and for a duration necessary to produce the information
709 required to complete the assessment ~~carry out the duties of the~~
710 ~~local council.~~

711 (c) Advance notice of an administrative assessment may not
712 be provided to a long-term care facility, except that notice of
713 followup assessments on specific problems may be provided.

714 (d) A representative of the office ~~local council member~~
715 ~~physically present for the administrative assessment~~ must shall
716 identify himself or herself to the administrator or designee ~~and~~
717 ~~cite the specific statutory authority for his or her assessment~~
718 ~~of the facility.~~

719 (e) An administrative assessment may not unreasonably
720 interfere with the programs and activities of residents.

721 (f) A representative of the office ~~local council member~~ may
722 not enter a single-family residential unit within a long-term
723 care facility during an administrative assessment without the
724 permission of the resident or the representative of the
725 resident.

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726 (g) An administrative assessment must be conducted in a
727 manner that will impose no unreasonable burden on a long-term
728 care facility.

729 ~~(3) Regardless of jurisdiction, the ombudsman may authorize~~
730 ~~a state or local council member to assist another local council~~
731 ~~to perform the administrative assessments described in this~~
732 ~~section.~~

733 ~~(3)(4)~~ (4) An onsite administrative assessment may not be
734 accomplished by forcible entry. However, if a representative of
735 the office ombudsman or a state or local council member is not
736 allowed to enter a long-term care facility, the administrator of
737 the facility shall be considered to have interfered with a
738 representative of the office, ~~the state council, or the local~~
739 ~~council~~ in the performance of official duties as described in s.
740 400.0083(1) and to have committed a violation of this part. The
741 representative of the office ombudsman shall report the refusal
742 by a facility to allow entry to the state ombudsman or designee,
743 who shall then report the incident to the agency, and the agency
744 shall record the report and take it into consideration when
745 determining actions allowable under s. 400.102, s. 400.121, s.
746 429.14, s. 429.19, s. 429.69, or s. 429.71.

747 (4) The department, in consultation with the state
748 ombudsman, may adopt rules implementing procedures for
749 conducting onsite administrative assessments of long-term care
750 facilities.

751 Section 11. Section 400.0075, Florida Statutes, is amended
752 to read:

753 400.0075 Complaint notification and resolution procedures.—

754 (1) (a) Any complaint ~~or problem~~ verified by a a

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755 ~~representative of the office an ombudsman council~~ as a result of
 756 an investigation may ~~or onsite administrative assessment, which~~
 757 ~~complaint or problem is determined to require remedial action by~~
 758 ~~the local council, shall~~ be identified and brought to the
 759 attention of the long-term care facility administrator subject
 760 to the confidentiality provisions of s. 400.0077 in writing.
 761 Upon receipt of the information such document, the
 762 administrator, with the concurrence of the representative of the
 763 office local council chair, shall establish target dates for
 764 taking appropriate remedial action. If, by the target date, the
 765 remedial action is not completed or forthcoming, the complaint
 766 shall be referred to the district manager local council chair
 767 may, after obtaining approval from the ombudsman and a majority
 768 of the members of the local council.

769 1. ~~Extend the target date if the chair has reason to~~
 770 ~~believe such action would facilitate the resolution of the~~
 771 ~~complaint.~~

772 2. ~~In accordance with s. 400.0077, publicize the complaint,~~
 773 ~~the recommendations of the council, and the response of the~~
 774 ~~long-term care facility.~~

775 3. ~~Refer the complaint to the state council.~~

776 (b) ~~If an ombudsman determines the local council chair~~
 777 ~~believes that the health, safety, welfare, or rights of a the~~
 778 ~~resident are in imminent danger, the ombudsman must immediately~~
 779 ~~notify the district manager. The district manager chair shall~~
 780 ~~notify the ombudsman or legal advocate, who, after verifying~~
 781 ~~that such imminent danger exists, must notify the appropriate~~
 782 ~~state agencies, including law enforcement, the state ombudsman,~~
 783 ~~and legal advocate to ensure the protection of shall seek~~

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784 ~~immediate legal or administrative remedies to protect the~~
 785 ~~resident.~~

786 (c) If the state ombudsman or legal advocate has reason to
 787 believe that the long-term care facility or an employee of the
 788 facility has committed a criminal act, the state ombudsman or
 789 legal advocate shall provide the local law enforcement agency
 790 with the relevant information to initiate an investigation of
 791 the case.

792 (2)(a) Upon referral from a district local council, the
 793 state ombudsman or designee council shall assume the
 794 responsibility for the disposition of the complaint. If a long-
 795 term care facility fails to take action to resolve or remedy the
 796 on a complaint by the state council, the state ombudsman council
 797 may, after obtaining approval from the ombudsman and a majority
 798 of the state council members:

799 (a)1- ~~In accordance with s. 400.0077, publicize the~~
 800 ~~complaint, the recommendations of the representatives of the~~
 801 ~~office local or state council, and the response of the long-term~~
 802 ~~care facility.~~

803 (b)2- ~~Recommend to the department and the agency a series~~
 804 ~~of facility reviews pursuant to s. 400.19, s. 429.34, or s.~~
 805 ~~429.67 to ensure correction and nonrecurrence of the conditions~~
 806 ~~that gave give rise to the complaint complaints against the a~~
 807 ~~long-term care facility.~~

808 (c)3- ~~Recommend to the department and the agency that the~~
 809 ~~long-term care facility no longer receive payments under any~~
 810 ~~state assistance program, including Medicaid.~~

811 (d)4- ~~Recommend to the department and the agency that~~
 812 ~~procedures be initiated for action against revocation of the~~

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813 long-term care facility's license in accordance with chapter
814 120.

815 ~~(b) If the state council chair believes that the health,~~
816 ~~safety, welfare, or rights of the resident are in imminent~~
817 ~~danger, the chair shall notify the ombudsman or legal advocate,~~
818 ~~who, after verifying that such imminent danger exists, shall~~
819 ~~seek immediate legal or administrative remedies to protect the~~
820 ~~resident.~~

821 ~~(c) If the ombudsman has reason to believe that the long-~~
822 ~~term care facility or an employee of the facility has committed~~
823 ~~a criminal act, the ombudsman shall provide local law~~
824 ~~enforcement with the relevant information to initiate an~~
825 ~~investigation of the case.~~

826 Section 12. Section 400.0078, Florida Statutes, is amended
827 to read:

828 400.0078 Citizen access to state Long-Term-Care ombudsman
829 program services.-

830 (1) The office shall establish a statewide toll-free
831 telephone number and e-mail address for receiving complaints
832 concerning matters adversely affecting the health, safety,
833 welfare, or rights of residents.

834 (2) ~~Every resident or representative of a resident shall~~
835 ~~receive,~~ Upon admission to a long-term care facility, each
836 resident or representative of a resident must receive
837 information regarding:

838 (a) The purpose of the state Long-Term-Care ombudsman
839 program,
840 (b) The statewide toll-free telephone number and e-mail
841 address for receiving complaints,
and

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842 (c) Information that retaliatory action cannot be taken
843 against a resident for presenting grievances or for exercising
844 any other resident rights.

845 (d) Other relevant information regarding how to contact
846 representatives of the office program.

847

848 Residents or their representatives must be furnished additional
849 copies of this information upon request.

850 Section 13. Section 400.0079, Florida Statutes, is amended
851 to read:

852 400.0079 Immunity.-

853 (1) Any person making a complaint pursuant to this part who
854 does so in good faith shall be immune from any liability, civil
855 or criminal, that otherwise might be incurred or imposed as a
856 direct or indirect result of making the complaint.

857 (2) Representatives of the office and ~~The ombudsman or any~~
858 ~~person authorized by the ombudsman to act on behalf of the~~
859 ~~office, as well as all members of the state council and local~~
860 ~~councils,~~ shall be immune from any liability, civil or criminal,
861 that otherwise might be incurred or imposed during the good
862 faith performance of official duties.

863 Section 14. Section 400.0081, Florida Statutes, is amended
864 to read:

865 400.0081 Access to facilities, residents, and records.-

866 (1) A long-term care facility shall provide representatives
867 of the office, ~~the state council and its members, and the local~~
868 ~~councils and their members~~ access to:

869 (a) Any portion of the long-term care facility and any
870 resident ~~as necessary to investigate or resolve a complaint.~~

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871 (b) Medical and social records of a resident for review as
872 ~~necessary to investigate or resolve a complaint~~, if:

873 1. The representative of the office has the permission of
874 the resident or the legal representative of the resident; or

875 2. The resident is unable to consent to the review and has
876 no legal representative.

877 (c) Medical and social records of the resident ~~as necessary~~
878 ~~to investigate or resolve a complaint~~, if:

879 1. A legal representative or guardian of the resident
880 refuses to give permission;

881 2. A representative of the office has reasonable cause to
882 believe that the legal representative or guardian is not acting
883 in the best interests of the resident; and

884 3. The representative of the office ~~state or local council~~
885 ~~member~~ obtains the approval of the state ombudsman.

886 (d) The administrative records, policies, and documents to
887 which residents or the general public have access.

888 (e) Upon request, copies of all licensing and certification
889 records maintained by the state with respect to a long-term care
890 facility.

891 (2) The department, in consultation with the state
892 ombudsman ~~and the state council~~, may adopt rules to establish
893 procedures to ensure access to facilities, residents, and
894 records as described in this section.

895 Section 15. Section 400.0083, Florida Statutes, is amended
896 to read:

897 400.0083 Interference; retaliation; penalties.—

898 (1) It shall be unlawful for any person, long-term care
899 facility, or other entity to willfully interfere with a

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900 representative of the office or the state council, ~~or a local~~
901 ~~council~~ in the performance of official duties.

902 (2) It shall be unlawful for any person, long-term care
903 facility, or other entity to knowingly or willfully take action
904 or retaliate against any resident, employee, or other person for
905 filing a complaint with, providing information to, or otherwise
906 cooperating with any representative of the office or the state
907 council, ~~or a local council~~.

908 (3) Any person, long-term care facility, or other entity
909 that violates this section:

910 (a) Shall be liable for damages and equitable relief as
911 determined by law.

912 (b) Commits a misdemeanor of the second degree, punishable
913 as provided in s. 775.083.

914 Section 16. Section 400.0087, Florida Statutes, is amended
915 to read:

916 400.0087 Department oversight; funding.—

917 (1) The department shall meet the costs associated with the
918 state ~~Long-Term Care~~ ombudsman program from funds appropriated
919 to it.

920 (a) The department shall include the costs associated with
921 support of the state ~~Long-Term Care~~ ombudsman program when
922 developing its budget requests for consideration by the Governor
923 and submittal to the Legislature.

924 (b) The department may divert from the federal ombudsman
925 appropriation an amount equal to the department's administrative
926 cost ratio to cover the costs associated with administering the
927 state ombudsman program. The remaining allotment from the Older
928 Americans Act program shall be expended on direct ombudsman

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929 activities.

930 (2) The department shall monitor the office ~~and~~ the state

931 council, ~~and the local councils~~ to ensure that each is carrying

932 out the duties delegated to it by state and federal law.

933 (3) The department is responsible for ensuring that the

934 office:

935 (a) Has the objectivity and independence required to

936 qualify it for funding under the federal Older Americans Act.

937 (b) Provides information to public and private agencies,

938 legislators, and others.

939 (c) Provides appropriate training to representatives of the

940 office ~~or of the state or local councils~~.

941 (d) Coordinates ombudsman services with Disability Rights

942 Florida the Advocacy Center for Persons with Disabilities and

943 with providers of legal services to residents ~~of long-term care~~

944 ~~facilities~~ in compliance with state and federal laws.

945 (4) The department shall also:

946 (a) Receive and disburse state and federal funds for

947 purposes that the state ombudsman has formulated in accordance

948 with the Older Americans Act.

949 (b) Whenever necessary, act as liaison between agencies and

950 branches of the federal and state governments and the office

951 ~~State Long-Term Care Ombudsman Program~~.

952 Section 17. Section 400.0089, Florida Statutes, is amended

953 to read:

954 400.0089 Complaint data reports.—The office shall maintain

955 a statewide uniform reporting system to collect and analyze data

956 relating to complaints and conditions in long-term care

957 facilities and to residents for the purpose of identifying and

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958 resolving significant ~~complaints~~ problems. The office shall

959 publish quarterly and make readily available information

960 pertaining to the number and types of complaints received by the

961 state ~~Long-Term Care~~ ombudsman program and shall include such

962 information in the annual report required under s. 400.0065.

963 Section 18. Section 400.0091, Florida Statutes, is amended

964 to read:

965 400.0091 Training.—The state ombudsman shall ensure that

966 appropriate training is provided to all representatives

967 ~~employees~~ of the office ~~and to the members of the state and~~

968 ~~local councils~~.

969 (1) All representatives ~~state and local council members and~~

970 ~~employees~~ of the office shall be given a minimum of 20 hours of

971 training upon employment with the office or appointment as an

972 ombudsman. Ten approval as a state or local council member and

973 ~~10~~ hours of continuing education is required annually

974 thereafter.

975 (2) The state ombudsman shall approve the curriculum for

976 the initial and continuing education training, which must, at a

977 minimum, address:

978 (a) Resident confidentiality.

979 (b) Guardianships and powers of attorney.

980 (c) Medication administration.

981 (d) Care and medication of residents with dementia and

982 Alzheimer's disease.

983 (e) Accounting for residents' funds.

984 (f) Discharge rights and responsibilities.

985 (g) Cultural sensitivity.

986 (h) Any other topic related to residency within a long-term

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987 ~~care facility recommended by the secretary.~~

988 (3) An individual ~~No employee, officer, or representative~~

989 ~~of the office or of the state or local councils,~~ other than the

990 ~~state~~ ombudsman, may not hold himself or herself out as a

991 representative of the office ~~State Long-Term Care Ombudsman~~

992 ~~Program~~ or conduct any authorized program duty described in this

993 part unless the individual person has received the training

994 required by this section and has been certified by the state

995 ombudsman as qualified to carry out ombudsman activities on

996 behalf of the office ~~or the state or local councils.~~

997 Section 19. Subsection (4) of section 20.41, Florida

998 Statutes, is amended to read:

999 20.41 Department of Elderly Affairs.—There is created a

1000 Department of Elderly Affairs.

1001 (4) The department shall administer the Office of State

1002 Long-Term Care Ombudsman Council, created by s. 400.0063

1003 400.0067, and the ~~local long-term care ombudsman councils,~~

1004 ~~created by s. 400.0069~~ and shall, as required by s. 712 of the

1005 federal Older Americans Act of 1965, ensure that ~~both~~ the state

1006 office operates and local long-term care ombudsman councils

1007 operate in compliance with the Older Americans Act.

1008 Section 20. Subsections (11) through (19) of section

1009 400.021, Florida Statutes, are renumbered as subsections (10)

1010 through (18), respectively, and present subsections (10) and

1011 (18) are amended to read:

1012 400.021 Definitions.—When used in this part, unless the

1013 context otherwise requires, the term:

1014 ~~(10) "Local ombudsman council" means a local long-term care~~

1015 ~~ombudsman council established pursuant to s. 400.0069, located~~

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1016 ~~within the Older Americans Act planning and service areas.~~

1017 ~~(17)-(18)~~ "State ombudsman program council" means the Office

1018 of State Long-Term Care Ombudsman Council established pursuant

1019 to s. 400.0063 ~~400.0067.~~

1020 Section 21. Paragraph (c) of subsection (1) and subsections

1021 (2) and (3) of section 400.022, Florida Statutes, are amended to

1022 read:

1023 400.022 Residents' rights.—

1024 (1) All licensees of nursing home facilities shall adopt

1025 and make public a statement of the rights and responsibilities

1026 of the residents of such facilities and shall treat such

1027 residents in accordance with the provisions of that statement.

1028 The statement shall assure each resident the following:

1029 (c) Any entity or individual that provides health, social,

1030 legal, or other services to a resident has the right to have

1031 reasonable access to the resident. The resident has the right to

1032 deny or withdraw consent to access at any time by any entity or

1033 individual. Notwithstanding the visiting policy of the facility,

1034 the following individuals must be permitted immediate access to

1035 the resident:

1036 1. Any representative of the federal or state government,

1037 including, but not limited to, representatives of the Department

1038 of Children and Families ~~Family~~ Services, the Department of

1039 Health, the Agency for Health Care Administration, the Office of

1040 the Attorney General, and the Department of Elderly Affairs; any

1041 law enforcement officer; representatives ~~members~~ of the state ~~or~~

1042 ~~local~~ ombudsman program council; and the resident's individual

1043 physician.

1044 2. Subject to the resident's right to deny or withdraw

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 1045 consent, immediate family or other relatives of the resident.
 1046

1047 The facility must allow representatives of the state ~~Long-Term~~
 1048 ~~Care~~ ombudsman program council to examine a resident's clinical
 1049 records with the permission of the resident or the resident's
 1050 legal representative and consistent with state law.

1051 (2) The licensee for each nursing home shall orally inform
 1052 the resident of the resident's rights and provide a copy of the
 1053 statement required by subsection (1) to each resident or the
 1054 resident's legal representative at or before the resident's
 1055 admission to a facility. The licensee shall provide a copy of
 1056 the resident's rights to each staff member of the facility. Each
 1057 such licensee shall prepare a written plan and provide
 1058 appropriate staff training to implement ~~the provisions of~~ this
 1059 section. The written statement of rights must include a
 1060 statement that a resident may file a complaint with the agency
 1061 or state local ombudsman program council. The statement must be
 1062 in boldfaced type and shall include the ~~name, address, and~~
 1063 telephone number and e-mail address of the state numbers of the
 1064 ~~local~~ ombudsman program council and the telephone number of the
 1065 central abuse hotline where complaints may be lodged.

1066 (3) Any violation of the resident's rights set forth in
 1067 this section shall constitute grounds for action by the agency
 1068 under ~~the provisions of~~ s. 400.102, s. 400.121, or part II of
 1069 chapter 408. In order to determine whether the licensee is
 1070 adequately protecting residents' rights, the licensure
 1071 inspection of the facility shall include private informal
 1072 conversations with a sample of residents to discuss residents'
 1073 experiences within the facility with respect to rights specified

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 1074 in this section and general compliance with standards, and
 1075 consultation with the state ombudsman program council ~~in the~~
 1076 ~~local planning and service area of the Department of Elderly~~
 1077 ~~Affairs in which the nursing home is located.~~

1078 Section 22. Subsections (8) and (9) and (11) through (14)
 1079 of section 400.0255, Florida Statutes, are amended to read:
 1080 400.0255 Resident transfer or discharge; requirements and
 1081 procedures; hearings.—

1082 (8) The notice required by subsection (7) must be in
 1083 writing and must contain all information required by state and
 1084 federal law, rules, or regulations applicable to Medicaid or
 1085 Medicare cases. The agency shall develop a standard document to
 1086 be used by all facilities licensed under this part for purposes
 1087 of notifying residents of a discharge or transfer. Such document
 1088 must include a means for a resident to request the state local
 1089 ~~long-term care~~ ombudsman program council to review the notice
 1090 and request information about or assistance with initiating a
 1091 fair hearing with the department's Office of Appeals Hearings.
 1092 In addition to any other pertinent information included, the
 1093 form shall specify the reason allowed under federal or state law
 1094 that the resident is being discharged or transferred, with an
 1095 explanation to support this action. Further, the form shall
 1096 state the effective date of the discharge or transfer and the
 1097 location to which the resident is being discharged or
 1098 transferred. The form shall clearly describe the resident's
 1099 appeal rights and the procedures for filing an appeal, including
 1100 the right to request the state local ombudsman program council
 1101 to review the notice of discharge or transfer. A copy of the
 1102 notice must be placed in the resident's clinical record, and a

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 1103 copy must be transmitted to the resident's legal guardian or
 1104 representative and to the ~~state local~~ ombudsman program council
 1105 within 5 business days after signature by the resident or
 1106 resident designee.

1107 (9) A resident may request that the ~~state local~~ ombudsman
 1108 program council review any notice of discharge or transfer given
 1109 to the resident. When requested by a resident to review a notice
 1110 of discharge or transfer, the ~~state local~~ ombudsman program
 1111 council shall do so within 7 days after receipt of the request.
 1112 The nursing home administrator, or the administrator's designee,
 1113 must forward the request for review contained in the notice to
 1114 the ~~state local~~ ombudsman program council within 24 hours after
 1115 such request is submitted. Failure to forward the request within
 1116 24 hours after the request is submitted shall toll the running
 1117 of the 30-day advance notice period until the request has been
 1118 forwarded.

1119 (11) Notwithstanding paragraph (10) (b), an emergency
 1120 discharge or transfer may be implemented as necessary pursuant
 1121 to state or federal law during the period of time after the
 1122 notice is given and before the time a hearing decision is
 1123 rendered. Notice of an emergency discharge or transfer to the
 1124 resident, the resident's legal guardian or representative, and
 1125 the ~~state local~~ ombudsman program council if requested pursuant
 1126 to subsection (9) must be by telephone or in person. This notice
 1127 shall be given before the transfer, if possible, or as soon
 1128 thereafter as practicable. A representative of the state local
 1129 ombudsman program council conducting a review under this
 1130 subsection shall do so within 24 hours after receipt of the
 1131 request. The resident's file must be documented to show who was

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 1132 contacted, whether the contact was by telephone or in person,
 1133 and the date and time of the contact. If the notice is not given
 1134 in writing, written notice meeting the requirements of
 1135 subsection (8) must be given the next working day.

1136 (12) After receipt of any notice required under this
 1137 section, the ~~state local~~ ombudsman program council may request a
 1138 private informal conversation with a resident to whom the notice
 1139 is directed, and, if known, a family member or the resident's
 1140 legal guardian or designee, to ensure that the facility is
 1141 proceeding with the discharge or transfer in accordance with ~~the~~
 1142 ~~requirements of~~ this section. If requested, the ~~state local~~
 1143 ombudsman program council shall assist the resident with filing
 1144 an appeal of the proposed discharge or transfer.

1145 (13) The following persons must be present at all hearings
 1146 authorized under this section:

1147 (a) The resident, or the resident's legal representative or
 1148 designee.

1149 (b) The facility administrator, or the facility's legal
 1150 representative or designee.

1151
 1152 A representative of the ~~state local long-term care~~ ombudsman
 1153 program council may be present at all hearings authorized by
 1154 this section.

1155 (14) In any hearing under this section, the following
 1156 information concerning the parties shall be confidential and
 1157 exempt from ~~the provisions of~~ s. 119.07(1):

1158 (a) Names and addresses.

1159 (b) Medical services provided.

1160 (c) Social and economic conditions or circumstances.

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1161 (d) Evaluation of personal information.
 1162 (e) Medical data, including diagnosis and past history of
 1163 disease or disability.
 1164 (f) Any information received verifying income eligibility
 1165 and amount of medical assistance payments. Income information
 1166 received from the Social Security Administration or the Internal
 1167 Revenue Service must be safeguarded according to the
 1168 requirements of the agency that furnished the data.
 1169
 1170 The exemption created by this subsection does not prohibit
 1171 access to such information by the state ombudsman program ~~a~~
 1172 ~~local long-term care ombudsman council~~ upon request, by a
 1173 reviewing court if such information is required to be part of
 1174 the record upon subsequent review, or as specified in s. 24(a),
 1175 Art. I of the State Constitution.
 1176 Section 23. Subsection (2) of section 400.1413, Florida
 1177 Statutes, is amended to read:
 1178 400.1413 Volunteers in nursing homes.—
 1179 (2) This section does not affect the activities of the
 1180 ~~state or local long-term care ombudsman program councils~~
 1181 authorized under part I.
 1182 Section 24. Paragraph (d) of subsection (5) of section
 1183 400.162, Florida Statutes, is amended to read:
 1184 400.162 Property and personal affairs of residents.—
 1185 (5)
 1186 (d) If, at any time during the period for which a license
 1187 is issued, a licensee that has not purchased a surety bond or
 1188 entered into a self-insurance agreement, as provided in
 1189 paragraphs (b) and (c), is requested to provide safekeeping for

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1190 the personal funds of a resident, the licensee shall notify the
 1191 agency of the request and make application for a surety bond or
 1192 for participation in a self-insurance agreement within 7 days
 1193 after ~~of~~ the request, exclusive of weekends and holidays. Copies
 1194 of the application, along with written documentation of related
 1195 correspondence with an insurance agency or group, shall be
 1196 maintained by the licensee for review by the agency and the
 1197 state ~~Nursing Home and Long-Term Care Facility~~ ombudsman program
 1198 Council.
 1199 Section 25. Subsections (1) and (4) of section 400.19,
 1200 Florida Statutes, are amended to read:
 1201 400.19 Right of entry and inspection.—
 1202 (1) In accordance with part II of chapter 408, the agency
 1203 and any duly designated officer or employee thereof or a
 1204 representative member of the state ~~Long-Term Care~~ ombudsman
 1205 program Council ~~or the local long-term care ombudsman council~~
 1206 shall have the right to enter upon and into the premises of any
 1207 facility licensed pursuant to this part, or any distinct nursing
 1208 home unit of a hospital licensed under chapter 395 or any
 1209 freestanding facility licensed under chapter 395 that provides
 1210 extended care or other long-term care services, at any
 1211 reasonable time in order to determine the state of compliance
 1212 with ~~the provisions of~~ this part, part II of chapter 408, and
 1213 applicable rules in force pursuant thereto. The agency shall,
 1214 within 60 days after receipt of a complaint made by a resident
 1215 or resident's representative, complete its investigation and
 1216 provide to the complainant its findings and resolution.
 1217 (4) The agency shall conduct unannounced onsite facility
 1218 reviews following written verification of licensee noncompliance

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1219 in instances in which the state ombudsman program ~~a long-term~~
 1220 ~~care ombudsman council~~, pursuant to ss. 400.0071 and 400.0075,
 1221 has received a complaint and has documented deficiencies in
 1222 resident care or in the physical plant of the facility that
 1223 threaten the health, safety, or security of residents, or when
 1224 the agency documents through inspection that conditions in a
 1225 facility present a direct or indirect threat to the health,
 1226 safety, or security of residents. However, the agency shall
 1227 conduct unannounced onsite reviews every 3 months of each
 1228 facility while the facility has a conditional license.
 1229 Deficiencies related to physical plant do not require followup
 1230 reviews after the agency has determined that correction of the
 1231 deficiency has been accomplished and that the correction is of
 1232 the nature that continued compliance can be reasonably expected.

1233 Section 26. Subsection (1) of section 400.191, Florida
 1234 Statutes, is amended to read:

1235 400.191 Availability, distribution, and posting of reports
 1236 and records.—

1237 (1) The agency shall provide information to the public
 1238 about all of the licensed nursing home facilities operating in
 1239 the state. The agency shall, within 60 days after a licensure
 1240 inspection visit or within 30 days after any interim visit to a
 1241 facility, send copies of the inspection reports to the state
 1242 ~~local long-term care ombudsman program council~~, the agency's
 1243 local office, and a public library or the county seat for the
 1244 county in which the facility is located. The agency may provide
 1245 electronic access to inspection reports as a substitute for
 1246 sending copies.

1247 Section 27. Subsection (6) and paragraph (c) of subsection

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1248 (7) of section 400.23, Florida Statutes, are amended to read:
 1249 400.23 Rules; evaluation and deficiencies; licensure
 1250 status.—

1251 (6) ~~Before~~ ~~Prior to~~ conducting a survey of the facility,
 1252 the survey team shall obtain a copy of the state local long-term
 1253 ~~care ombudsman program council~~ report on the facility. Problems
 1254 noted in the report shall be incorporated into and followed up
 1255 through the agency's inspection process. This procedure does not
 1256 preclude the state local long-term care ombudsman program
 1257 ~~council~~ from requesting the agency to conduct a followup visit
 1258 to the facility.

1259 (7) The agency shall, at least every 15 months, evaluate
 1260 all nursing home facilities and make a determination as to the
 1261 degree of compliance by each licensee with the established rules
 1262 adopted under this part as a basis for assigning a licensure
 1263 status to that facility. The agency shall base its evaluation on
 1264 the most recent inspection report, taking into consideration
 1265 findings from other official reports, surveys, interviews,
 1266 investigations, and inspections. In addition to license
 1267 categories authorized under part II of chapter 408, the agency
 1268 shall assign a licensure status of standard or conditional to
 1269 each nursing home.

1270 (c) In evaluating the overall quality of care and services
 1271 and determining whether the facility will receive a conditional
 1272 or standard license, the agency shall consider the needs and
 1273 limitations of residents in the facility and the results of
 1274 interviews and surveys of a representative sampling of
 1275 residents, families of residents, representatives of the state
 1276 ~~ombudsman program council members in the planning and service~~

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1277 ~~area in which the facility is located~~, guardians of residents,
1278 and staff of the nursing home facility.

1279 Section 28. Paragraph (a) of subsection (3), paragraph (f)
1280 of subsection (5), and subsection (6) of section 400.235,
1281 Florida Statutes, are amended to read:

1282 400.235 Nursing home quality and licensure status; Gold
1283 Seal Program.—

1284 (3) (a) The Gold Seal Program shall be developed and
1285 implemented by the Governor's Panel on Excellence in Long-Term
1286 Care which shall operate under the authority of the Executive
1287 Office of the Governor. The panel shall be composed of three
1288 persons appointed by the Governor, to include a consumer
1289 advocate for senior citizens and two persons with expertise in
1290 the fields of quality management, service delivery excellence,
1291 or public sector accountability; three persons appointed by the
1292 Secretary of Elderly Affairs, to include an active member of a
1293 nursing facility family and resident care council and a member
1294 of the University Consortium on Aging; a representative of the
1295 Office of State Long-Term Care Ombudsman; one person appointed
1296 by the Florida Life Care Residents Association; one person
1297 appointed by the State Surgeon General; two persons appointed by
1298 the Secretary of Health Care Administration; one person
1299 appointed by the Florida Association of Homes for the Aging; and
1300 one person appointed by the Florida Health Care Association.
1301 Vacancies on the panel shall be filled in the same manner as the
1302 original appointments.

1303 (5) Facilities must meet the following additional criteria
1304 for recognition as a Gold Seal Program facility:

1305 (f) Evidence an outstanding record regarding the number and

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1306 types of substantiated complaints reported to the Office of
1307 State Long-Term Care Ombudsman ~~Council~~ within the 30 months
1308 preceding application for the program.

1309
1310 A facility assigned a conditional licensure status may not
1311 qualify for consideration for the Gold Seal Program until after
1312 it has operated for 30 months with no class I or class II
1313 deficiencies and has completed a regularly scheduled relicensure
1314 survey.

1315 (6) The agency, nursing facility industry organizations,
1316 consumers, Office of State Long-Term Care Ombudsman Council, and
1317 members of the community may recommend to the Governor
1318 facilities that meet the established criteria for consideration
1319 for and award of the Gold Seal. The panel shall review nominees
1320 and make a recommendation to the Governor for final approval and
1321 award. The decision of the Governor is final and is not subject
1322 to appeal.

1323 Section 29. Paragraph (a) of subsection (1) of section
1324 415.1034, Florida Statutes, is amended to read:

1325 415.1034 Mandatory reporting of abuse, neglect, or
1326 exploitation of vulnerable adults; mandatory reports of death.—

1327 (1) MANDATORY REPORTING.—

1328 (a) Any person, including, but not limited to, any:

- 1329 1. Physician, osteopathic physician, medical examiner,
1330 chiropractic physician, nurse, paramedic, emergency medical
1331 technician, or hospital personnel engaged in the admission,
1332 examination, care, or treatment of vulnerable adults;
1333 2. Health professional or mental health professional other
1334 than one listed in subparagraph 1.;

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1335 3. Practitioner who relies solely on spiritual means for
1336 healing;

1337 4. Nursing home staff; assisted living facility staff;
1338 adult day care center staff; adult family-care home staff;
1339 social worker; or other professional adult care, residential, or
1340 institutional staff;

1341 5. State, county, or municipal criminal justice employee or
1342 law enforcement officer;

1343 6. ~~An~~ Employee of the Department of Business and
1344 Professional Regulation conducting inspections of public lodging
1345 establishments under s. 509.032;

1346 7. Florida advocacy council member or representative of the
1347 Office of State Long-Term Care Ombudsman ~~council member~~; or

1348 8. Bank, savings and loan, or credit union officer,
1349 trustee, or employee,
1350
1351 who knows, or has reasonable cause to suspect, that a vulnerable
1352 adult has been or is being abused, neglected, or exploited shall
1353 immediately report such knowledge or suspicion to the central
1354 abuse hotline.

1355 Section 30. Subsection (1) of section 415.104, Florida
1356 Statutes, is amended to read:

1357 415.104 Protective investigations of cases of abuse,
1358 neglect, or exploitation of vulnerable adults; transmittal of
1359 records to state attorney.—

1360 (1) The department shall, upon receipt of a report alleging
1361 abuse, neglect, or exploitation of a vulnerable adult, begin
1362 within 24 hours a protective investigation of the facts alleged
1363 therein. If a caregiver refuses to allow the department to begin

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1364 a protective investigation or interferes with the conduct of
1365 such an investigation, the appropriate law enforcement agency
1366 shall be contacted for assistance. If, during the course of the
1367 investigation, the department has reason to believe that the
1368 abuse, neglect, or exploitation is perpetrated by a second
1369 party, the appropriate law enforcement agency and state attorney
1370 shall be orally notified. The department and the law enforcement
1371 agency shall cooperate to allow the criminal investigation to
1372 proceed concurrently with, and not be hindered by, the
1373 protective investigation. The department shall make a
1374 preliminary written report to the law enforcement agencies
1375 within 5 working days after the oral report. The department
1376 shall, within 24 hours after receipt of the report, notify the
1377 appropriate Florida local advocacy council, or state long-term
1378 care ombudsman program council, when appropriate, that an
1379 alleged abuse, neglect, or exploitation perpetrated by a second
1380 party has occurred. Notice to the Florida local advocacy council
1381 or state long-term care ombudsman program council may be
1382 accomplished orally or in writing and shall include the name and
1383 location of the vulnerable adult alleged to have been abused,
1384 neglected, or exploited and the nature of the report.

1385 Section 31. Subsection (8) of section 415.1055, Florida
1386 Statutes, is amended to read:

1387 415.1055 Notification to administrative entities.—

1388 (8) At the conclusion of a protective investigation at a
1389 facility, the department shall notify either the Florida local
1390 advocacy council or state long-term care ombudsman program
1391 council of the results of the investigation. This notification
1392 must be in writing.

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1393 Section 32. Subsection (2) of section 415.106, Florida
1394 Statutes, is amended to read:

1395 415.106 Cooperation by the department and criminal justice
1396 and other agencies.—

1397 (2) To ensure coordination, communication, and cooperation
1398 with the investigation of abuse, neglect, or exploitation of
1399 vulnerable adults, the department shall develop and maintain
1400 interprogram agreements or operational procedures among
1401 appropriate departmental programs and the Office of State Long-
1402 Term Care Ombudsman Council, the Florida Statewide Advocacy
1403 Council, and other agencies that provide services to vulnerable
1404 adults. These agreements or procedures must cover such subjects
1405 as the appropriate roles and responsibilities of the department
1406 in identifying and responding to reports of abuse, neglect, or
1407 exploitation of vulnerable adults; the provision of services;
1408 and related coordinated activities.

1409 Section 33. Paragraph (g) of subsection (3) of section
1410 415.107, Florida Statutes, is amended to read:

1411 415.107 Confidentiality of reports and records.—

1412 (3) Access to all records, excluding the name of the
1413 reporter which shall be released only as provided in subsection
1414 (6), shall be granted only to the following persons, officials,
1415 and agencies:

1416 (g) Any appropriate official of the Florida advocacy
1417 council or state long-term care ombudsman program council
1418 investigating a report of known or suspected abuse, neglect, or
1419 exploitation of a vulnerable adult.

1420 Section 34. Subsection (20) of section 429.02, Florida
1421 Statutes, is amended to read:

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1422 429.02 Definitions.—When used in this part, the term:

1423 (20) "Resident's representative or designee" means a person
1424 other than the owner, or an agent or employee of the facility,
1425 designated in writing by the resident, if legally competent, to
1426 receive notice of changes in the contract executed pursuant to
1427 s. 429.24; to receive notice of and to participate in meetings
1428 between the resident and the facility owner, administrator, or
1429 staff concerning the rights of the resident; to assist the
1430 resident in contacting the state ombudsman program council if
1431 the resident has a complaint against the facility; or to bring
1432 legal action on behalf of the resident pursuant to s. 429.29.

1433 Section 35. Paragraph (b) of subsection (3) of section
1434 429.07, Florida Statutes, is amended to read:

1435 429.07 License required; fee.—

1436 (3) In addition to the requirements of s. 408.806, each
1437 license granted by the agency must state the type of care for
1438 which the license is granted. Licenses shall be issued for one
1439 or more of the following categories of care: standard, extended
1440 congregate care, limited nursing services, or limited mental
1441 health.

1442 (b) An extended congregate care license shall be issued to
1443 facilities providing, directly or through contract, services
1444 beyond those authorized in paragraph (a), including services
1445 performed by persons licensed under part I of chapter 464 and
1446 supportive services, as defined by rule, to persons who would
1447 otherwise be disqualified from continued residence in a facility
1448 licensed under this part.

1449 1. In order for extended congregate care services to be
1450 provided, the agency must first determine that all requirements

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1451 established in law and rule are met and must specifically
 1452 designate, on the facility's license, that such services may be
 1453 provided and whether the designation applies to all or part of
 1454 the facility. Such designation may be made at the time of
 1455 initial licensure or relicensure, or upon request in writing by
 1456 a licensee under this part and part II of chapter 408. The
 1457 notification of approval or the denial of the request shall be
 1458 made in accordance with part II of chapter 408. Existing
 1459 facilities qualifying to provide extended congregate care
 1460 services must have maintained a standard license and may not
 1461 have been subject to administrative sanctions during the
 1462 previous 2 years, or since initial licensure if the facility has
 1463 been licensed for less than 2 years, for any of the following
 1464 reasons:

- 1465 a. A class I or class II violation;
- 1466 b. Three or more repeat or recurring class III violations
 1467 of identical or similar resident care standards from which a
 1468 pattern of noncompliance is found by the agency;
- 1469 c. Three or more class III violations that were not
 1470 corrected in accordance with the corrective action plan approved
 1471 by the agency;
- 1472 d. Violation of resident care standards which results in
 1473 requiring the facility to employ the services of a consultant
 1474 pharmacist or consultant dietitian;
- 1475 e. Denial, suspension, or revocation of a license for
 1476 another facility licensed under this part in which the applicant
 1477 for an extended congregate care license has at least 25 percent
 1478 ownership interest; or
- 1479 f. Imposition of a moratorium pursuant to this part or part

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1480 II of chapter 408 or initiation of injunctive proceedings.
 1481 2. A facility that is licensed to provide extended
 1482 congregate care services shall maintain a written progress
 1483 report on each person who receives services which describes the
 1484 type, amount, duration, scope, and outcome of services that are
 1485 rendered and the general status of the resident's health. A
 1486 registered nurse, or appropriate designee, representing the
 1487 agency shall visit the facility at least quarterly to monitor
 1488 residents who are receiving extended congregate care services
 1489 and to determine whether ~~if~~ the facility is in compliance with
 1490 this part, part II of chapter 408, and relevant rules. One of
 1491 the visits may be in conjunction with the regular survey. The
 1492 monitoring visits may be provided through contractual
 1493 arrangements with appropriate community agencies. A registered
 1494 nurse shall serve as part of the team that inspects the
 1495 facility. The agency may waive one of the required yearly
 1496 monitoring visits for a facility that has been licensed for at
 1497 least 24 months to provide extended congregate care services,
 1498 if, during the inspection, the registered nurse determines that
 1499 extended congregate care services are being provided
 1500 appropriately, and if the facility has no class I or class II
 1501 violations and no uncorrected class III violations. The agency
 1502 must first consult with the state long-term care ~~ombudsman~~
 1503 program council for the area in which the facility is located to
 1504 determine whether ~~if~~ any complaints have been made and
 1505 substantiated about the quality of services or care. The agency
 1506 may not waive one of the required yearly monitoring visits if
 1507 complaints have been made and substantiated.
 1508 3. A facility that is licensed to provide extended

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1509 congregate care services must:

1510 a. Demonstrate the capability to meet unanticipated

1511 resident service needs.

1512 b. Offer a physical environment that promotes a homelike

1513 setting, provides for resident privacy, promotes resident

1514 independence, and allows sufficient congregate space as defined

1515 by rule.

1516 c. Have sufficient staff available, taking into account the

1517 physical plant and firesafety features of the building, to

1518 assist with the evacuation of residents in an emergency.

1519 d. Adopt and follow policies and procedures that maximize

1520 resident independence, dignity, choice, and decisionmaking to

1521 permit residents to age in place, so that moves due to changes

1522 in functional status are minimized or avoided.

1523 e. Allow residents or, if applicable, a resident's

1524 representative, designee, surrogate, guardian, or attorney in

1525 fact to make a variety of personal choices, participate in

1526 developing service plans, and share responsibility in

1527 decisionmaking.

1528 f. Implement the concept of managed risk.

1529 g. Provide, directly or through contract, the services of a

1530 person licensed under part I of chapter 464.

1531 h. In addition to the training mandated in s. 429.52,

1532 provide specialized training as defined by rule for facility

1533 staff.

1534 4. A facility that is licensed to provide extended

1535 congregate care services is exempt from the criteria for

1536 continued residency set forth in rules adopted under s. 429.41.

1537 A licensed facility must adopt its own requirements within

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1538 guidelines for continued residency set forth by rule. However,

1539 the facility may not serve residents who require 24-hour nursing

1540 supervision. A licensed facility that provides extended

1541 congregate care services must also provide each resident with a

1542 written copy of facility policies governing admission and

1543 retention.

1544 5. The primary purpose of extended congregate care services

1545 is to allow residents, as they become more impaired, the option

1546 of remaining in a familiar setting from which they would

1547 otherwise be disqualified for continued residency. A facility

1548 licensed to provide extended congregate care services may also

1549 admit an individual who exceeds the admission criteria for a

1550 facility with a standard license, if the individual is

1551 determined appropriate for admission to the extended congregate

1552 care facility.

1553 6. Before the admission of an individual to a facility

1554 licensed to provide extended congregate care services, the

1555 individual must undergo a medical examination as provided in s.

1556 429.26(4) and the facility must develop a preliminary service

1557 plan for the individual.

1558 7. When a facility can no longer provide or arrange for

1559 services in accordance with the resident's service plan and

1560 needs and the facility's policy, the facility shall make

1561 arrangements for relocating the person in accordance with s.

1562 429.28(1)(k).

1563 8. Failure to provide extended congregate care services may

1564 result in denial of extended congregate care license renewal.

1565 Section 36. Subsection (9) of section 429.19, Florida

1566 Statutes, is amended to read:

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1567 429.19 Violations; imposition of administrative fines;
 1568 grounds.-

1569 (9) The agency shall develop and disseminate an annual list
 1570 of all facilities sanctioned or fined for violations of state
 1571 standards, the number and class of violations involved, the
 1572 penalties imposed, and the current status of cases. The list
 1573 shall be disseminated, at no charge, to the Department of
 1574 Elderly Affairs, the Department of Health, the Department of
 1575 Children and Families ~~Family Services~~, the Agency for Persons
 1576 with Disabilities, the area agencies on aging, the Florida
 1577 Statewide Advocacy Council, and the state ~~and local~~ ombudsman
 1578 program councils. The Department of Children and Families ~~Family~~
 1579 ~~Services~~ shall disseminate the list to service providers under
 1580 contract to the department who are responsible for referring
 1581 persons to a facility for residency. The agency may charge a fee
 1582 commensurate with the cost of printing and postage to other
 1583 interested parties requesting a copy of this list. This
 1584 information may be provided electronically or through the
 1585 agency's Internet site.

1586 Section 37. Subsection (8) of section 429.26, Florida
 1587 Statutes, is amended to read:

1588 429.26 Appropriateness of placements; examinations of
 1589 residents.-

1590 (8) The Department of Children and Families ~~Family Services~~
 1591 may require an examination for supplemental security income and
 1592 optional state supplementation recipients residing in facilities
 1593 at any time and shall provide the examination whenever a
 1594 resident's condition requires it. Any facility administrator;
 1595 personnel of the agency, the department, or the Department of

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1596 Children and Families ~~Family Services~~; or representative of the
 1597 state long-term care ombudsman program council member who
 1598 believes a resident needs to be evaluated shall notify the
 1599 resident's case manager, who shall take appropriate action. A
 1600 report of the examination findings shall be provided to the
 1601 resident's case manager and the facility administrator to help
 1602 the administrator meet his or her responsibilities under
 1603 subsection (1).

1604 Section 38. Subsection (2) and paragraph (b) of subsection
 1605 (3) of section 429.28, Florida Statutes, are amended to read:

1606 429.28 Resident bill of rights.-

1607 (2) The administrator of a facility shall ensure that a
 1608 written notice of the rights, obligations, and prohibitions set
 1609 forth in this part is posted in a prominent place in each
 1610 facility and read or explained to residents who cannot read.
 1611 This notice shall include the statewide toll-free telephone
 1612 number and e-mail address ~~name, address, and telephone numbers~~
 1613 of the state local ombudsman program council and central abuse
 1614 hotline and, when applicable, the Advocacy Center for Persons
 1615 with Disabilities, Inc., and the Florida local advocacy council,
 1616 where complaints may be lodged. The facility must ensure a
 1617 resident's access to a telephone to call the state local
 1618 ombudsman program council, central abuse hotline, Advocacy
 1619 Center for Persons with Disabilities, Inc., and the Florida
 1620 local advocacy council.

1621 (3)

1622 (b) In order to determine whether the facility is
 1623 adequately protecting residents' rights, the biennial survey
 1624 shall include private informal conversations with a sample of

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 1625 residents and consultation with the state ombudsman program
 1626 ~~council~~ in the planning and service area in which the facility
 1627 is located to discuss residents' experiences within the
 1628 facility.

1629 Section 39. Section 429.34, Florida Statutes, is amended to
 1630 read:

1631 429.34 Right of entry and inspection.—In addition to the
 1632 requirements of s. 408.811, any duly designated officer or
 1633 employee of the department, the Department of Children and
 1634 Families Family Services, the Medicaid Fraud Control Unit of the
 1635 Office of the Attorney General, the state or local fire marshal,
 1636 or a representative member of the state ~~or local long-term care~~
 1637 ombudsman program ~~council~~ shall have the right to enter
 1638 unannounced upon and into the premises of any facility licensed
 1639 pursuant to this part in order to determine the state of
 1640 compliance with ~~the provisions of~~ this part, part II of chapter
 1641 408, and applicable rules. Data collected by the state ~~or local~~
 1642 ~~long-term care~~ ombudsman program ~~councils~~ or the state or local
 1643 advocacy councils may be used by the agency in investigations
 1644 involving violations of regulatory standards.

1645 Section 40. Subsection (2) of section 429.35, Florida
 1646 Statutes, is amended to read:

1647 429.35 Maintenance of records; reports.—

1648 (2) Within 60 days after the date of the biennial
 1649 inspection visit required under s. 408.811 or within 30 days
 1650 after the date of any interim visit, the agency shall forward
 1651 the results of the inspection to the state ~~local~~ ombudsman
 1652 program ~~council~~ in whose planning and service area, as defined
 1653 in part II of chapter 400, the facility is located; to at least

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 1654 one public library or, in the absence of a public library, the
 1655 county seat in the county in which the inspected assisted living
 1656 facility is located; and, when appropriate, to the district
 1657 Adult Services and Mental Health Program Offices.

1658 Section 41. Subsection (2) of section 429.85, Florida
 1659 Statutes, is amended to read:

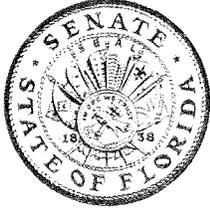
1660 429.85 Residents' bill of rights.—

1661 (2) The provider shall ensure that residents and their
 1662 legal representatives are made aware of the rights, obligations,
 1663 and prohibitions set forth in this part. Residents must also be
 1664 given the statewide toll-free telephone number and e-mail
 1665 address of the state ombudsman program and the telephone number
 1666 of names, addresses, and telephone numbers of the local
 1667 ~~ombudsman council~~ and the central abuse hotline where they may
 1668 lodge complaints.

1669 Section 42. Subsection (17) of section 744.444, Florida
 1670 Statutes, is amended to read:

1671 744.444 Power of guardian without court approval.—Without
 1672 obtaining court approval, a plenary guardian of the property, or
 1673 a limited guardian of the property within the powers granted by
 1674 the order appointing the guardian or an approved annual or
 1675 amended guardianship report, may:
 1676 (17) Provide confidential information about a ward that is
 1677 related to an investigation arising under part I of chapter 400
 1678 to a representative of the local ~~or~~ state ombudsman program
 1679 ~~council member~~ conducting such an investigation. Any such
 1680 ombudsman shall have a duty to maintain the confidentiality of
 1681 such information.

1682 Section 43. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General Government
Community Affairs
Environmental Preservation and Conservation
Ethics and Elections

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR DARREN SOTO

Deputy Democratic Whip
14th District

March 6, 2013

The Honorable Eleanor Sobel
Committee on Children, Families, and Elder Affairs
520 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Sobel,

I respectfully request that Senate Bill 1212, State Ombudsman Program, be placed on the agenda as soon as possible.

Senate Bill 1212 would revise legislative intent with respect to citizen ombudsmen. This bill would delete references to ombudsman councils and transfer their responsibilities to representatives of the Office of State Long-Term Care Ombudsman. It would reorganize local ombudsman councils, establish districts, provide duties of the State Long-Term Care Ombudsman Advisory Council, require long-term facilities to provide representatives of the office with access to facilities, residents, and records and revise training requirements for representatives of the office and ombudsmen.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto
State Senator, District 14

Cc: Claude Hendon, Committee Administrative Assistant

RECEIVED

MAR 06 2013

Senate Committee
Children and Families

REPLY TO:

□ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/15/13

Meeting Date

Topic State Ombudsman Program → Amendment

Bill Number 1212
(if applicable)

Name Laura Cantwell

Amendment Barcode 819690
(if applicable)

Job Title Associate State Director

Address 200 W College Ave, Suite 304

Phone 571-5163

Tallahassee FL 32301
City State Zip

E-mail lcantwell@aarpo.org

Speaking: For Against Information

Representing AAAP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-15-13

Meeting Date

Topic Long-Term Care Ombudsman

Bill Number SB 1212
(if applicable)

Name Susan Anderson

Amendment Barcode 819690
(if applicable)

Job Title Deputy State Ombudsman

Address 4040 Esplanade Way

Phone 850-414-2054

Tallahassee FL 32399
City State Zip

E-mail andersons@elderaffairs.org

Speaking: For Against Information

Representing State Long-Term Care Ombudsman Program

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-15-13

Meeting Date

Topic Strike-all amendment

Bill Number SB 1212
(if applicable)

Name G.C. Murray, Jr.

Amendment Barcode 819690
(if applicable)

Job Title Legislative Counsel

Address 218 S. Monroe St.

Phone 305-469-5206

Street

Tallahassee

FL

State

32301

Zip

E-mail gc.murray@floridajustice
association.org

City

Speaking: For Against Information

Representing FJA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1748

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Evers

SUBJECT: Medicaid Nursing Home Eligibility

DATE: April 15, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Hendon	CF	Fav/CS
2.			AHS	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1748 provides the Department of Children and Families (DCF) with authority to review financial transactions as part of its review of an applicant's eligibility for Medicaid. The bill also directs DCF to exempt the value of a life insurance policy, annuity, or group certificate that pays burial expenses when determining an applicant's eligibility for Medicaid. The exclusion applies only to instruments covering burial expenses with a face value of up to \$12,500 which name the state as beneficiary for payment amounts that exceed final burial costs.

This bill would have a positive fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends section 409.902 of the Florida Statutes.

II. Present Situation:

Medicaid

Medicaid is the health care safety net for low-income Floridians. Medicaid serves approximately 3.3 million people in Florida, with over half of those being children and adolescents 20 years of age or younger. Medicaid is a partnership between the federal and state governments where the federal government establishes the structure for the program and pays a share of the cost. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services (CMS). The plan outlines current Medicaid eligibility standards, policies, and reimbursement methodologies.

In Florida, the program is administered by the Agency for Health Care Administration (AHCA). AHCA delegates certain functions to other state agencies, including the DCF, the Agency for Persons with Disabilities (APD), and the Department of Elder Affairs (DOEA). AHCA has overall responsibility for the program and qualifies providers, sets payment levels, and pays for services. The DCF is responsible for determining financial eligibility for Medicaid recipients. The APD operates one of the larger waiver programs under Medicaid, the Home and Community Based Waiver program serving individuals with disabilities. The DOEA assesses Medicaid recipients to determine if they require nursing home care. Specifically, an individual:

- Requires nursing home placement as evidenced by the need for medical observation throughout a 24-hour period and requires care to be performed on a daily basis under the direct supervision of a health professional of medically complex services because of mental or physical incapacitation; or
- Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24-hour period and requires care to be performed on a daily basis under the supervision of a health professional because of mental or physical incapacitation; or
- Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24-hour period and requires limited care to be performed on a daily basis under the supervision of a health professional because of mild mental or physical incapacitation.

The Medicaid eligibility income threshold for institutional care placement, home and community based care services, and hospice services, is 300 percent of the Supplemental Security Income (SSI) federal benefit rate.¹ The current SSI federal benefit rate is \$710 for an individual.² Thus, individuals with incomes under \$2,130 per month are eligible for Medicaid long-term care services.³

The February 25, 2013 Social Services Estimating Conference estimated that expenditures for Medicaid for FY 2012-2013 would be \$20.77 billion. One of the most important and expensive

¹ Rule 65A-1.713(1)(d), F.A.C.

² Social Security Administration, *SSI Federal Payment Amounts for 2013*, available at <http://www.ssa.gov/oact/cola/SSI.html> (last visited April 10, 2013).

³ Fla. Dep't. of Children and Families, *SSI-Related Programs Fact Sheets* (April 2013), available at <http://www.dcf.state.fl.us/programs/access/docs/ssifactsheet.pdf> (last visited April 10, 2013).

components of Medicaid is long-term care. The conference estimated that \$4.75 billion will be spent on long-term care under Medicaid in FY 2012-2013.

Long-Term Managed Care

In 2011, the Legislature passed and the Governor signed into law HB 7107 (Chapter 2011-134, Laws of Florida) to increase the use of managed care in Medicaid. The law requires both long-term care services and other Medicaid services to be provided through managed care plans. Long-term Care Managed Care component of the law will be implemented first. Implementation of the program began July 1, 2012 with full implementation by October 1, 2013.

AHCA has chosen the plans that may participate in the program through a competitive bid process. AHCA chose a certain number of long-term care managed care plans for each region to ensure that enrollees in the program to ensure that recipients have a choice between plans. AHCA will now begin to notify and transition eligible Medicaid recipients into the program. It is anticipated that the Florida Long-Term Care Managed Program will be available in certain areas of the State beginning the first quarter of 2013 and will be in all areas by October 1, 2013.⁴

On February 1, 2013, the federal Centers for Medicare and Medicaid Services, approved AHCA's request for a Home and Community Based Care Services waiver for individuals 65 and older and individuals with physical disabilities ages 18 through 64 years old.

Paying for Long-Term Care

Floridians who need nursing home care, but do not qualify for Medicaid, must pay for their care privately or through insurance. According to the 2011 MetLife Market Survey of Nursing Home, Assisted Living, Adult Day Services, and Home Care Costs, the national average annual cost of a nursing home was \$78,110 for a semi-private room in 2011. Individuals who need nursing home care may be ineligible for Medicaid because of their financial assets and/or monthly income. Many individuals paying privately for nursing home care spend their assets and then become eligible for Medicaid. Some, however, have monthly income from pensions and other sources that prevent them from becoming eligible for Medicaid.

Some individuals, with assistance from financial planners and attorneys, have developed methods of arranging assets in such a way that they are not countable when Medicaid eligibility is determined. Elder law attorneys across the country actively advertise services to assist elderly individuals with personal service contracts and other asset protection methods. For example, the website of a South Florida law firm prominently displays the following sentences on its website:

- “Asset Protection For People With Too Much Income or Assets to Qualify for Government Programs;” and
- “For ten years we have successfully helped families preserve their assets and qualify for Florida Nursing Home Medicaid benefits and Assisted Living public benefits.”⁵

⁴ Agency for Health Care Administration website, *Statewide Medicaid Managed Care Program*, available at <http://ahca.myflorida.com/> (last visited March 20, 2013).

⁵ See <http://www.buxtonlaw.com/flmedicaidplanning.shtml> (last visited April 10, 2013).

According to DCF, some individuals, prior to entering a nursing facility or enrolling in a Medicaid home and community based service waiver program, transfer accumulated assets to a relative through a contract which provides that the relative will provide personal services to the individual for a specified period of time. Current DCF policy does not preclude the transfer of funds to relatives when contracts are drawn up to prepay for future personal services. If the contracts are for an amount significantly higher than the rates paid for similar services, however, the person may be attempting to shield assets in order to qualify for Medicaid. DCF indicates that many of the contracted services incorporated into the contracts are services that close relatives would normally provide without charge, such as visitation, transportation, entertainment, and oversight of medical care. Current law does not contain standards for these contracts or enable DCF to monitor or enforce them to ensure that contracted services are actually provided.⁶

Section 1924 of the Social Security Act contains provisions to prevent "spousal impoverishment," which can leave the spouse who is still living at home in the community with little or no income or resources.⁷ When a couple applies for Medicaid, an assessment of the couple's resources is made and a protected resource amount of \$115,920¹⁴ is set aside for the community spouse and the remainder is considered available for the individual applying for Medicaid. This protected amount is known as the Community Spouse Resource Allowance (CSRA). An individual applying for Medicaid cannot be determined ineligible for assistance based on the assets of the individual's spouse when:

- The applicant assigns his or her rights to support from the community spouse to the state;
- The applicant is physically or mentally unable to assign his right by the state has the right to bring a support proceeding against the community spouse; or
- The state determines the denial of eligibility would work an undue hardship.⁸

While federal law provides states the authority to seek financial support from the community spouse under these circumstances, DCF indicates no mechanism to recover funds from the community spouse is available in current Florida law.⁹

Federal Deficit Reduction Act of 2005

The Federal Deficit Reduction Act of 2005 (DRA)¹⁰ contained a number of provisions that were intended to discourage the use of planning techniques and transactions which are intended to protect wealth while enabling access to public benefits.

When an individual applies for Medicaid coverage for long-term care, DCF must conduct a review, or "look-back," to determine whether the individual (or his or her spouse) transferred assets to another person or party for less than fair market value (FMV). The DRA lengthened the "look-back period" to 60 months prior to the date the individual applied for Medicaid. When

⁶Fla. Dep't of Children and Families, *Staff Analysis and Economic Impact- SB 1748* (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁷42 U.S.C. 1396r-5(d).

⁸42 U.S.C. 1396r-(5)(c)(3)(C).

⁹ See *supra* note 6.

¹⁰ Pub. Law No. 109-171, S.1932, 109th Cong. (Feb. 8, 2006).

individuals transfer assets at less than FMV they are subject to a penalty that delays the date they can qualify to receive Medicaid long-term care services. Previously the penalty period began with the month the assets were transferred, which created an opportunity for individuals to avoid part or all of a penalty by transferring assets months or years before they actually entered a nursing home. Under the DRA, the penalty period now begins on either the date of the asset transfer, or the date the individual enters a nursing home and is found eligible for coverage of institutional level services that Medicaid would pay for were it not for the imposition of a transfer penalty—whichever is later.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 409.902, F.S., relating to eligibility for Medicaid, to provide the DCF with authority to review financial transactions as part of its review of an applicant's eligibility for Medicaid. The bill also directs DCF to exempt the value of a life insurance policy, annuity, or group certificate that pays burial expenses when determining an applicant's eligibility for Medicaid. The exclusion applies only to instruments covering burial expenses with a face value of up to \$12,500 which name the state as beneficiary for payment amounts that exceed final burial costs. The bill also makes technical changes, substituting "Children and Families" for "Children and Family Services" where the term appears in the section.

Section 2 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹¹Dep't. of Health and Human Services, Centers for Medicaid and Medicare Services, *Important Facts for State Policymakers Deficit Reduction Act*, (January 8, 2008), available at <http://www.cms.gov/Regulations-and-Guidance/Legislation/DeficitReductionAct/downloads/TOAbackgrounder.pdf> (last visited April 10, 2013).

B. Private Sector Impact:

Individuals who attempt to shield their assets in order to gain eligibility to Medicaid may find it more difficult to do. Individuals who purchase insurance or an annuity to pay for their burial expenses will not, as a result of the asset, put their Medicaid eligibility at risk.

C. Government Sector Impact:

The bill would have a positive fiscal impact on the state's Medicaid expenditures. The amount is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on April 15, 2013:

The CS:

- Removes the original bill text, which limited the use of personal services contracts for individuals applying for Medicaid long-term care services and provided DCF with authority to recover long-term care costs from the spouse of a Medicaid recipient who has assigned his or her right to the state.
- Provides DCF authority to review financial transactions made by an applicant for Medicaid that might affect eligibility.

B. Amendments:

None.



832814

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) and paragraphs (a) and (b) of Subsection (8) of section 409.902, Florida Statutes, is amended to read:

409.902 Designated single state agency; payment requirements; program title; release of medical records.—

(1) The Agency for Health Care Administration is designated as the single state agency authorized to make payments for medical assistance and related services under Title XIX of the



832814

13 Social Security Act. These payments shall be made, subject to
14 any limitations or directions provided for in the General
15 Appropriations Act, only for services included in the program,
16 shall be made only on behalf of eligible individuals, and shall
17 be made only to qualified providers in accordance with federal
18 requirements for Title XIX of the Social Security Act and the
19 provisions of state law. This program of medical assistance is
20 designated the "Medicaid program." The Department of Children
21 and Families ~~Family Services~~ is responsible for Medicaid
22 eligibility determinations, including, but not limited to,
23 policy, rules, reviewing financial transactions affecting
24 eligibility, and the agreement with the Social Security
25 Administration for Medicaid eligibility determinations for
26 Supplemental Security Income recipients, as well as the actual
27 determination of eligibility. As a condition of Medicaid
28 eligibility, subject to federal approval, the Agency for Health
29 Care Administration and the Department of Children and Families
30 ~~Family Services~~ shall ensure that each recipient of Medicaid
31 consents to the release of her or his medical records to the
32 Agency for Health Care Administration and the Medicaid Fraud
33 Control Unit of the Department of Legal Affairs.

34 (8) The department shall implement the following project
35 governance structure until the system is implemented:

36 (a) The Secretary of Children and Families ~~Family Services~~
37 shall have overall responsibility for the project.

38 (b) The project shall be governed by an executive steering
39 committee composed of three department staff members appointed
40 by the Secretary of Children and Families ~~Family Services~~; three
41 agency staff members, including at least two state Medicaid



832814

42 program staff members, appointed by the Secretary of the Agency
43 for Health Care Administration; one staff member from Children's
44 Medical Services within the Department of Health appointed by
45 the Surgeon General; and a representative from the Florida
46 Healthy Kids Corporation.

47 Section 2. This act shall take effect July 1, 2013.

48
49 ===== T I T L E A M E N D M E N T =====

50 And the title is amended as follows:

51 Delete everything before the enacting clause
52 and insert:

53 A bill to be entitled
54 An act relating to Medicaid eligibility; amending s.
55 409.902, F.S.; requiring the Department of Children
56 and Families to review financial transactions
57 affecting eligibility; making technical corrections;
58 providing an effective date.



866862

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Altman) recommended the following:

1 **Senate Amendment to Amendment (832814) (with title**
2 **amendment)**

3
4 Between lines 46 and 47
5 insert:

6 Section 2. Section 409.9022, Florida Statutes, is created
7 to read:

8 409.9022 Medical eligibility; burial expense exemption.-
9 (1) Notwithstanding any other provision of law, the
10 department, in determining an applicant's eligibility for
11 Medicaid, shall exempt the value of a life insurance policy,
12 annuity, or group certificate that:



866862

13 (a) Includes terms that preclude the use of its proceeds
14 for anything other than the payment of the owner's final burial
15 expense and has a face amount that does not exceed the limits
16 established under s. 626.785(3);

17 (b) Names the state as the irrevocable beneficiary such
18 that any proceeds of the life insurance policy, annuity, or
19 group certificate which exceed the final burial expense will be
20 remitted to the state up to the amount of Medicaid assistance
21 provided to the owner; and

22 (c) Provides the owner with the opportunity to name a
23 contingent beneficiary if the proceeds from the policy exceed
24 the cost of:

- 25 1. The owner's final burial expenses; and
26 2. The amount of Medicaid benefits provided to the owner.

27 (2) This section does not limit other exemptions that apply
28 to a life insurance policy, annuity, or group certificate when
29 determining an applicant's eligibility for Medicaid.

30 (3) If a state agency determines that a waiver or
31 authorization from a federal agency is necessary to implement
32 any provision of this section, the agency affected by the
33 provision shall request the waiver or authorization and may
34 delay implementing such provision until the waiver or
35 authorization is granted.

36 (4) The Department of Children and Families may adopt rules
37 to administer this section.

38
39 ===== T I T L E A M E N D M E N T =====

40 And the title is amended as follows:

41 Delete line 58



866862

42 and insert:

43 creating s. 409.9022, F.S.; exempting the value of a
44 Medicaid applicant's life insurance policy, annuity,
45 or group certificate from the determination of the
46 applicant's Medicaid eligibility under certain
47 circumstances; authorizing a state agency to delay
48 implementation of certain provisions if a federal
49 waiver or authorization is required; specifying
50 limitations; authorizing the department to adopt
51 rules; providing an effective date.

By Senator Evers

2-01397-13

20131748__

A bill to be entitled

An act relating to Medicaid nursing home eligibility; amending s. 409.902, F.S.; specifying limitations and sanctions on persons transferring assets in order to become eligible for Medicaid nursing facility services; making technical corrections; requiring the Department of Children and Families to adopt rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 409.902, Florida Statutes, is amended to read:

409.902 Designated single state agency; eligibility determinations ~~payment requirements; program title~~; release of medical records; Internet eligibility system; rules.-

(1) SINGLE STATE MEDICAID AGENCY.-The Agency for Health Care Administration is designated as the single state agency authorized to make payments for medical assistance and related services under Title XIX of the Social Security Act. These payments shall be made, subject to any limitations or directions provided for in the General Appropriations Act, only for services included in the Medicaid program, ~~shall be made~~ only on behalf of eligible individuals, and ~~shall be made~~ only to qualified providers in accordance with federal requirements under for Title XIX of the Social Security Act and ~~the provisions of~~ state law. This program of medical assistance is designated the "Medicaid program."

(2) ELIGIBILITY DETERMINATIONS.-The Department of Children

Page 1 of 8

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2-01397-13

20131748__

and Families ~~Family Services~~ is responsible for determining Medicaid eligibility ~~determinations~~, including, but not limited to, policy, rules, and the agreement with the Social Security Administration for Medicaid eligibility ~~determinations~~ for Supplemental Security Income recipients, as well as the actual determination of eligibility.

(a) As a condition of Medicaid eligibility, subject to federal approval, the agency ~~for Health Care Administration~~ and the department ~~of Children and Family Services~~ shall ensure that each Medicaid recipient ~~of Medicaid~~ consents to the release of her or his medical records to the agency ~~for Health Care Administration~~ and the Medicaid Fraud Control Unit of the Department of Legal Affairs.

(b) ~~(2)~~ Eligibility is restricted to United States citizens and to lawfully admitted noncitizens who meet the criteria provided in s. 414.095(3).

1. ~~(a)~~ Citizenship or immigration status must be verified. For noncitizens, this includes verification of the validity of documents with the United States Citizenship and Immigration Services using the federal SAVE verification process.

2. ~~(b)~~ State funds may not be used to provide medical services to individuals who do not meet the requirements of this subsection unless the services are necessary to treat an emergency medical condition or are for pregnant women. Such services are authorized only to the extent provided under federal law and in accordance with federal regulations as provided in 42 C.F.R. s. 440.255.

(3) ELIGIBILITY FOR NURSING FACILITY SERVICES.-In determining eligibility for nursing facility services, including

Page 2 of 8

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2-01397-13 20131748__
 59 institutional hospice services and services provided through a
 60 home and community-based waiver, under the Medicaid program, the
 61 Department of Children and Families shall apply the following
 62 limitations and sanctions on asset transfers made after July 1,
 63 2013.

64 (a) Individuals who enter into a personal services contract
 65 with a relative shall be considered to have transferred assets
 66 without fair compensation to qualify for Medicaid if any of the
 67 following occurs:

68 1. The contracted services duplicate services available
 69 through other sources or providers, such as Medicaid, Medicare,
 70 private insurance, or another legally obligated third party.

71 2. The contracted services do not directly benefit the
 72 individual or are services normally provided out of
 73 consideration for the individual;

74 3. The actual cost to deliver services is not computed in a
 75 manner that clearly reflects the actual number of hours to be
 76 expended and the contract does not clearly identify each
 77 specific service and the average number of hours required to
 78 deliver each service each month.

79 4. The hourly rate for each contracted service is computed
 80 at more than minimum wage, except if the provider is a
 81 professional in the field for the specific service or services,
 82 in which case the hourly rate is more than the amount normally
 83 charged by a professional who traditionally provides the same or
 84 similar services in the same geographical area.

85 5. The contracted services are not provided on a
 86 prospective basis only and are for services provided before July
 87 1, 2013.

2-01397-13 20131748__
 88 6. The contract does not provide fair compensation to the
 89 individual in her or his lifetime as set forth in the life
 90 expectancy tables published by the Office of the Chief Actuary
 91 of the Social Security Administration.

92 (b) If an applicant for services has a nonapplicant spouse,
 93 the applicant spouse shall be determined ineligible for Medicaid
 94 if she or he, or the person acting on her or his behalf, refuses
 95 to provide information about the nonapplicant spouse or
 96 cooperate in the pursuit of court-ordered medical support or the
 97 recovery of Medicaid expenses paid by the state on her or his
 98 behalf.

99 (c) The agency shall seek recovery of all Medicaid-covered
 100 expenses and pursue court-ordered medical support for a
 101 recipient from the nonrecipient spouse if she or he refuses to
 102 make her or his assets available to the recipient spouse and the
 103 recipient spouse has assigned his or her right to support to the
 104 state.

105 (4)(3) INTERNET ELIGIBILITY SYSTEM.—To the extent ~~that~~
 106 funds are appropriated, the Department of Children and Families
 107 shall collaborate with the agency ~~for Health Care Administration~~
 108 to develop an Internet-based system that is modular,
 109 interoperable, and scalable for eligibility determination for
 110 Medicaid and the Children's Health Insurance Program (CHIP)
 111 which ~~that~~ complies with all applicable federal and state laws
 112 and requirements.

113 (a)(4) The system shall accomplish the following primary
 114 business objectives:

115 1. ~~(a)~~ Provide individuals and families with a single point
 116 of access to information that explains benefits, premiums, and

2-01397-13 20131748__

117 cost sharing available through Medicaid, the Children's Health
118 Insurance Program, or any other state or federal health
119 insurance exchange.

120 ~~2.(b)~~ Enable timely, accurate, and efficient enrollment of
121 eligible persons into available assistance programs.

122 ~~3.(e)~~ Prevent eligibility fraud.

123 ~~4.(d)~~ Allow for detailed financial analysis of eligibility-
124 based cost drivers.

125 ~~(b)(5)~~ The system shall include, but is not limited to, the
126 following business and functional requirements:

127 ~~1.(a)~~ Allow for the completion and submission of an online
128 application for eligibility determination that accepts the use
129 of electronic signatures.

130 ~~2.(b)~~ Include a process that enables automatic enrollment
131 of qualified individuals in Medicaid, the Children's Health
132 Insurance Program, or any other state or federal exchange that
133 offers cost-sharing benefits for the purchase of health
134 insurance.

135 ~~3.(e)~~ Allow for the determination of Medicaid eligibility
136 based on modified adjusted gross income by using information
137 submitted in the application and information accessed and
138 verified through automated and secure interfaces with authorized
139 databases.

140 ~~4.(d)~~ Include the ability to determine specific categories
141 of Medicaid eligibility and interfaces with the Florida Medicaid
142 Management Information System to support a determination, using
143 federally approved assessment methodologies, of state and
144 federal financial participation rates for persons in each
145 eligibility category.

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146 ~~5.(e)~~ Allow for the accurate and timely processing of
147 eligibility claims and adjudications.

148 ~~6.(f)~~ Align with and incorporate all applicable state and
149 federal laws, requirements, and standards to include the
150 information technology security requirements established
151 pursuant to s. 282.318 and the accessibility standards
152 established under part II of chapter 282.

153 ~~7.(g)~~ Produce transaction data, reports, and performance
154 information that contribute to an evaluation of the program,
155 continuous improvement in business operations, and increased
156 transparency and accountability.

157 ~~(c)(6)~~ The department shall develop the system, subject to
158 the approval by the Legislative Budget Commission and as
159 required by the General Appropriations Act for the 2012-2013
160 fiscal year.

161 ~~(d)(7)~~ The system must be completed by October 1, 2013, and
162 ready for implementation by January 1, 2014.

163 ~~(e)(8)~~ The department shall implement the following project
164 governance structure until the system is implemented:

165 ~~1.(a)~~ The Secretary of Children and Family Services shall
166 have overall responsibility for the project.

167 ~~2.(b)~~ The project shall be governed by an executive
168 steering committee composed of three department staff members
169 appointed by the Secretary of Children and Family Services;
170 three agency staff members, including at least two state
171 Medicaid program staff members, appointed by the Secretary of
172 the Agency for Health Care Administration; one staff member from
173 Children's Medical Services within the Department of Health
174 appointed by the Surgeon General; and a representative from the

2-01397-13

20131748__

175 Florida Healthy Kids Corporation.

176 ~~3.1(e)~~ The executive steering committee shall have the
177 overall responsibility for ensuring that the project meets its
178 primary business objectives and shall:

179 ~~a.1~~ Provide management direction and support to the
180 project management team.

181 ~~b.2~~ Review and approve any changes to the project's scope,
182 schedule, and budget.

183 ~~c.3~~ Review, approve, and determine whether to proceed with
184 any major deliverable project.

185 ~~d.4~~ Recommend suspension or termination of the project to
186 the Governor, the President of the Senate, and the Speaker of
187 the House of Representatives if the committee determines that
188 the primary business objectives cannot be achieved.

189 ~~4.(d)~~ A project management team shall be appointed by and
190 work under the direction of the executive steering committee.
191 The project management team shall:

192 ~~a.1~~ Provide planning, management, and oversight of the
193 project.

194 ~~b.2~~ Submit an operational work plan and provide quarterly
195 updates to the plan to the executive steering committee. The
196 plan must specify project milestones, deliverables, and
197 expenditures.

198 ~~c.3~~ Submit written monthly project status reports to the
199 executive steering committee.

200 (5) RULES.—The Department of Children and Families shall
201 adopt any rules necessary to carry out its statutory duties
202 under this section for receiving and processing Medicaid
203 applications and determining Medicaid eligibility, and any other

Page 7 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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20131748__

204 statutory provisions related to responsibility for the
205 determination of Medicaid eligibility.

206 Section 2. This act shall take effect July 1, 2013.

Page 8 of 8

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The Florida Senate

Committee Agenda Request

To: Senator Eleanor Sobel, Chair
Committee on Children, Families, and Elder Affairs

Subject: Committee Agenda Request

Date: March 12, 2013

I respectfully request that **Senate Bill #1748**, relating to Medicaid Nursing Home Eligibility, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

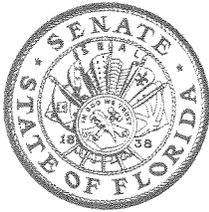


Senator Greg Evers
Florida Senate, District 2

RECEIVED

MAR 13 2013

Senate Committee
Children and Families



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GREG EVERS

2nd District

COMMITTEES:

Criminal Justice, *Chair*
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and
Domestic Security
Transportation

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

April 15, 2013

The Honorable Eleanor Sobel, Chair
Committee on Children, Families and Elder Affairs
520 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Senator Sobel,

I would like to request that my legislative aide, Molly Caddell, be allowed to present SB 1748 on my behalf at your committee meeting scheduled for April 15, 2013 at 1:00pm. I will be in the Committee on Communication, Energy and Public Utilities at that time and will be unable to attend your committee meeting.

Sincerely,

A handwritten signature in cursive script that reads "Greg Evers".

Greg Evers

Cc: Claude Hendon

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APR 15 2013

Senate Committee
Children and Families

REPLY TO:

- 209 East Zaragoza Street, Pensacola, Florida 32502-6048 (850) 595-0213 FAX: (888) 263-0013
- 308 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/15/13

Meeting Date

Topic Amendment to Medicaid NH Eligibility

Bill Number 1748
(if applicable)

Name Laura Cantwell

Amendment Barcode 832814
(if applicable)

Job Title Associate State Director

Address 200 W College Avenue, Suite 304
Street

Phone 577-5163

Tallahassee FL 32301
City State Zip

E-mail lcantwell@corp.us

Speaking: For Against Information

Representing AARP

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-15-13

Meeting Date

Topic Medicaid Eligibility

Bill Number 1748
(if applicable)

Name Twyla Sketchley

Amendment Barcode BAR 1748, 832814
(if applicable)

Job Title Attorney

Address 3689 Coolidge Ct, Ste
Street

Phone _____

Tallahassee FL 32311
City State Zip

E-mail mailing@sketchleylaw.com

Speaking: For Against Information

Representing elder law attorneys

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/15/13

Meeting Date

Topic Medicaid Eligibility

Bill Number 1748

Name Amanda Huston

Amendment Barcode 832814
(if applicable)

Job Title Director

Address 1317 Winewood Blvd

Phone 717-4641

Tallahassee FL 32399
Street City State Zip

E-mail amanda_huston@
dcl.state.fl.us

Speaking: For Against Information

Representing Department of children & Families

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/15/13

Meeting Date

Topic MEDICAID NURSING HOME ELIGIBILITY

Bill Number 1748

Name NATALIE KELLY

Amendment Barcode 832814
(if applicable)

Job Title PRESIDENT, ACCLAIM STRATEGIES

Address PO Box 923

Phone 850-570-5747

Tallahassee FL 32302
Street City State Zip

E-mail NATALIE@
ACCLAIM STRATEGIES, INC

Speaking: For Against Information

Representing ALZHEIMER'S ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

didn't speak

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/15/2013

Meeting Date

Topic Burial Insurance

Bill Number SB 1748
(if applicable)

Name Howard E. (Gene) Adams

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 215 South Monroe Street, Second Floor
Street
Tallahassee Fla. 32301
City State Zip

Phone 850-222-3533

E-mail gene@penningtonlaw.com

Speaking: For Against Information

Representing ICP Medicaid Products

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/15/13

Meeting Date

Topic Medicaid Eligibility

Bill Number 1748
(if applicable)

Name Steve Roddenberry

Amendment Barcode 8160802
(if applicable)

Job Title Special Consultant

Address 215 S. Monroe Street
Street
Tallahassee FL 32312
City State Zip

Phone 222-3533

E-mail sroddenberry@penninglaw.com

Speaking: For Against Information

Representing Various product providers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance
Commerce and Tourism

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, *Co-Chair*
Joint Legislative Auditing Committee
Joint Legislative Budget Commission

SENATOR ALAN HAYS
11th District

April 9, 2013

Senator Eleanor Sobel, Chair
Children, Families, and Elder Affairs Committee
520 Knott Building
404 S. Monroe
Tallahassee, FL 32399-1100

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APR 09 2013

**Senate Committee
Children and Families**

Dear Chair Sobel,

I respectfully request to be excused from Monday's committee meeting. I have prior commitments in the district and will not be back in time.

Thank you for your consideration of this request.

Sincerely,

Senator D. Alan Hays, DMD
District 11

CC: Senator Don Gaetz, President
Chris Clark, Staff Director- Senate President's Office
Claude Hendon, Staff Director
Lynn Wells, Administrative Assistant

REPLY TO:
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DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: LL 37
Caption: Children, Families, and Elder Affairs Committee

Case:

Type:
Judge:

Started: 4/15/2013 1:03:46 PM
Ends: 4/15/2013 1:47:53 PM
Length: 00:44:08

1:03:53 PM Meeting called to order
1:03:58 PM Opening remarks by chair
1:04:13 PM Roll call
1:04:33 PM Chair Sobel
1:04:35 PM Tab 1: SB 108 by Sen. Detert
1:04:52 PM Sen. Detert
1:05:31 PM SB 108 Temporarily Postponed
1:05:46 PM Tab 2: SB 110 by Sen. Flores
1:05:58 PM Sen. Grimsley presents the bill
1:06:16 PM AM's 893402 and 776476 withdrawn
1:06:40 PM Late Filed AM 237656 by Sen. Grimsley
1:06:57 PM Sen. Grimsley presents the AM
1:07:29 PM Chair Sobel
1:07:32 PM AM adopted
1:07:55 PM Public Testimony
1:07:59 PM Stan Whittaker - Chair, Florida Association of Nurse Practitioners
1:10:44 PM Chair Sobel
1:10:56 PM Sen. Thompson
1:11:03 PM Stan Whittaker
1:12:41 PM Chair Sobel
1:12:44 PM Dan Hendrickson - FL Public Defenders Assn
1:13:22 PM Mai Kung - Nurse Practitioner
1:17:16 PM Kirstyn Smith - FSU Nursing Student
1:21:42 PM Chair Sobel
1:23:14 PM Roll call on SB 110
1:23:39 PM Tab 3: SB 312 by Sen. Braynon
1:24:12 PM SB 312 Temporarily Postponed
1:24:22 PM Chair Sobel
1:24:24 PM Tab 8: SB 1212 by Sen. Soto
1:24:36 PM Christine Alkenavich, Sen. Soto's aide presents the bill
1:25:58 PM Sen. Diaz de la Portilla
1:26:13 PM AM 558942 withdrawn
1:26:40 PM AM 819690 by Sen. Clemens
1:26:59 PM Chair Sobel
1:27:05 PM Public Testimony
1:27:09 PM Laura Cantwell - AARP - waves in support
1:27:12 PM Susan Anderson - State Long-Term Care Ombudsan Program - waves in support
1:27:19 PM G.C. Murray - FJA - waves in support
1:27:43 PM AM adopted
1:27:49 PM Chair Sobel
1:27:53 PM Sen. Braynon
1:28:23 PM Chair Sobel
1:28:24 PM Roll call on SB 1212
1:28:42 PM Chair Sobel
1:28:55 PM Tab 4: SB 590 by Sen. Joyner
1:29:07 PM Randi Rosete, Sen. Joyner's aide presents the bill
1:30:02 PM Chair Sobel
1:30:23 PM Public Testimony
1:30:29 PM Gene Adams - Florida Bar Real Property, Probate and Trust Law Section - waves in support
1:30:34 PM Roll call on SB 590
1:31:08 PM Tab 5: SB 610 by Sen. Joyner
1:31:13 PM Randi Rosete, Sen. Joyner's aide presents the bill

1:31:37 PM AM 137920 by Sen. Braynon
1:32:01 PM Chair Sobel
1:32:03 PM Public Testimony
1:32:19 PM Gene Adams waves in support
1:32:26 PM Roll call on SB 610
1:32:59 PM Tab 6: SB 804 by Sen. Richter
1:33:08 PM Becky Kokkinos, Sen. Richter's aide presents the bill
1:33:52 PM Chair Sobel
1:34:05 PM Sen. Braynon
1:34:30 PM Becky Kokkinos
1:35:57 PM Chair Sobel
1:36:19 PM Roll call on SB 804
1:36:38 PM Chair Sobel
1:37:06 PM Tab 9: SB 1748 by Sen. Evers
1:37:13 PM Molly Caddell, Sen. Evers aide presents the bill
1:37:21 PM AM 866862 by Sen. Altman
1:38:27 PM Public Testimony
1:38:31 PM Steve Wade
1:38:35 PM AM adopted
1:38:41 PM Strike All AM 832814
1:38:56 PM Molly Caddell
1:39:29 PM AM adopted
1:39:31 PM Chair Sobel
1:39:41 PM Public Testimony
1:39:47 PM Laura Cantwell - AARP - waves in support
1:39:56 PM Twyla Sketchley - Elder Law Attorneys - waves in support
1:40:22 PM Amanda Houston - Dep of Children & Families - waves in support
1:40:35 PM Gene Adams waves in support
1:40:52 PM Roll call on SB 1748
1:42:05 PM Tab 7: SB 976 by Sen. Sobel
1:42:06 PM Sen. Sobel presents the bill
1:43:24 PM Sen. Diaz de la Portilla
1:44:24 PM Public Testimony
1:44:30 PM Laura Cantwell - AARP - waves in support
1:44:35 PM Sen. Sobel closes on the bill
1:44:44 PM Roll call on SB 976
1:45:04 PM Chair Sobel
1:45:10 PM Closing Remarks
1:47:03 PM Sen. Thompson
1:47:25 PM Chair Sobel
1:47:42 PM Meeting Adjourned