HOUSE AMENDMENT

705-165AXK-08 Bill No. CS for SB 1276, 1st Eng.

Amendment No. ___ (for drafter's use only)

CHAMBER ACTION

Senate House

ORIGINAL STAMP BELOW

Representative(s) Green offered the following:

Amendment (with title amendment)

On page 30, between lines 27 and 28, of the bill

insert:

Section 12. Section 409.221, Florida Statutes, is created to read:

409.221 Consumer-directed care program.--

(1) SHORT TITLE.--This section may be cited as the "Florida Consumer-Directed Care Act."

(2) LEGISLATIVE FINDINGS.--The Legislature finds that alternatives to institutional care, such as in-home and community-based care, should be encouraged. The Legislature finds that giving recipients of in-home and community-based services the opportunity to select the services they need and the providers they want, including family and friends, enhances their sense of dignity and autonomy. The Legislature also finds that providing consumers choice and control, as tested in current research and demonstration projects, has been beneficial and should be developed further and

implemented statewide.

(3) LEGISLATIVE INTENT.--It is the intent of the Legislature to nurture the autonomy of those citizens of the state, of all ages, who have disabilities by providing the long-term care services they need in the least restrictive, appropriate setting. It is the intent of the Legislature to give such individuals more choices in and greater control over the purchased long-term care services they receive.

(4) CONSUMER-DIRECTED CARE.--

(a) Program established.--The Agency for Health Care Administration shall establish the consumer-directed care program which shall be based on the principles of consumer choice and control. The agency shall implement the program upon federal approval. The agency shall establish interagency cooperative agreements with and shall work with the Departments of Elderly Affairs, Health, and Children and Family Services to implement and administer the program. The program shall allow enrolled persons to choose the providers of services and to direct the delivery of services, to best meet their long-term care needs. The program must operate within the funds appropriated by the Legislature.

(b) Eligibility and enrollment.--Persons who are enrolled in one of the Medicaid home and community-based waiver programs and are able to direct their own care, or to designate an eligible representative, may choose to participate in the consumer-directed care program.

(c) Definitions.--For purposes of this section, the term:

1. "Budget allowance" means the amount of money made available each month to a consumer to purchase needed long-term care services, based on the results of a functional

needs assessment.

2. "Consultant" means an individual who provides technical assistance to consumers in meeting their responsibilities under this section.

3. "Consumer" means a person who has chosen to participate in the program, has met the enrollment requirements, and has received an approved budget allowance.

4. "Fiscal intermediary" means an entity approved by the agency that helps the consumer manage the consumer's budget allowance, retains the funds, processes employment information, if any, and tax information, reviews records to ensure correctness, writes paychecks to providers, and delivers paychecks to the consumer for distribution to providers and caregivers.

5. "Provider" means:

a. A person licensed or otherwise permitted to render services eligible for reimbursement under this program for whom the consumer is not the employer of record; or

b. A consumer-employed caregiver for whom the consumer is the employer of record.

6. "Representative" means an uncompensated individual designated by the consumer to assist in managing the consumer's budget allowance and needed services.

(d) Budget allowances.--Consumers enrolled in the program shall be given a monthly budget allowance based on the results of their assessed functional needs and the financial resources of the program. Consumers shall receive the budget allowance directly from an agency-approved fiscal intermediary. Each department shall develop purchasing guidelines, approved by the agency, to assist consumers in using the budget allowance to purchase needed, cost-effective

services.

(e) Services.--Consumers shall use the budget allowance only to pay for home and community-based services that meet the consumer's long-term care needs and are a cost-efficient use of funds. Such services may include, but are not limited to, the following:

1. Personal care.

2. Homemaking and chores, including housework, meals, shopping, and transportation.

3. Home modifications and assistive devices which may increase the consumer's independence or make it possible to avoid institutional placement.

4. Assistance in taking self-administered medication.

5. Day care and respite care services, including those provided by nursing home facilities pursuant to s. 400.141(6) or by adult day care facilities licensed pursuant to s. 400.554.

6. Personal care and support services provided in an assisted living facility.

(f) Consumer roles and responsibilities.--Consumers shall be allowed to choose the providers of services, as well as when and how the services are provided. Providers may include a consumer's neighbor, friend, spouse, or relative.

1. In cases where a consumer is the employer of record, the consumer's roles and responsibilities include, but are not limited to, the following:

a. Developing a job description.

b. Selecting caregivers and submitting information for the background screening as required in s. 435.05.

c. Communicating needs, preferences, and expectations about services being purchased.

d. Providing the fiscal intermediary with all information necessary for provider payments and tax requirements.

e. Ending the employment of an unsatisfactory caregiver.

2. In cases where a consumer is not the employer of record, the consumer's roles and responsibilities include, but are not limited to, the following:

a. Communicating needs, preferences, and expectations about services being purchased.

b. Ending the services of an unsatisfactory provider.

c. Providing the fiscal agent with all information necessary for provider payments and tax requirements.

(g) Agency and departments roles and responsibilities.--The agency's and the departments' roles and responsibilities include, but are not limited to, the following:

1. Assessing each consumer's functional needs, helping with the service plan, and providing ongoing assistance with the service plan.

2. Offering the services of consultants who shall provide training, technical assistance, and support to the consumer.

3. Completing the background screening for providers.

4. Approving fiscal intermediaries.

5. Establishing the minimum qualifications for all caregivers and providers and being the final arbiter of the fitness of any individual to be a caregiver or provider.

(h) Fiscal intermediary roles and responsibilities.--The fiscal intermediary's roles and responsibilities include, but are not limited to, the

following:

1. Providing recordkeeping services.

2. Retaining the consumer-directed care funds, processing employment and tax information, if any, reviewing records to ensure correctness, writing paychecks to providers, and delivering paychecks to the consumer for distribution.

(i) Background screening requirements.--All persons who render care under this section shall comply with the requirements of s. 435.05. Persons shall be excluded from employment pursuant to s. 435.06.

1. Persons excluded from employment may request an exemption from disqualification, as provided in s. 435.07. Persons not subject to certification or professional licensure may request an exemption from the agency. In considering a request for an exemption, the agency shall comply with the provisions of s. 435.07.

2. The agency shall, as allowable, reimburse consumer-employed caregivers for the cost of conducting background screening as required by this section.

For purposes of this section, a person who has undergone screening, who is qualified for employment under this section and applicable rule, and who has not been unemployed for more than 180 days following such screening is not required to be rescreened. Such person must attest under penalty of perjury to not having been convicted of a disqualifying offense since completing such screening.

(j) Rules; federal waivers.--In order to implement this section:

1. The agency and the Departments of Elderly Affairs, Health, and Children and Family Services are authorized to

adopt and enforce rules.

2. The agency shall take all necessary action to ensure state compliance with federal regulations. The agency shall apply for any necessary federal waivers or waiver amendments needed to implement the program.

(k) Reviews and reports.--The agency and the Departments of Elderly Affairs, Health, and Children and Family Services shall each, on an ongoing basis, review and assess the implementation of the consumer-directed care program. By January 15 of each year, the agency shall submit a written report to the Legislature that includes each department's review of the program and contains recommendations for improvements to the program.

Section 13. (1) Prior to December 1, 2002, the Agency for Health Care Administration, in consultation with the Department of Elderly Affairs, shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a plan to reduce the number of nursing home bed days purchased by the state Medicaid program and to replace such nursing home care with care provided in less costly alternative settings.

(2) The plan must include specific goals for reducing Medicaid-funded bed days and recommend specific statutory and operational changes necessary to achieve such reduction.

(3) The plan must include an evaluation of the cost-effectiveness and the relative strengths and weaknesses of programs that serve as alternatives to nursing homes.

Section 14. Section 408.034, Florida Statutes, is amended to read:

408.034 Duties and responsibilities of agency; rules.--

(1) The agency is designated as the single state agency to issue, revoke, or deny certificates of need and to issue, revoke, or deny exemptions from certificate-of-need review in accordance with the district plans and present and future federal and state statutes. The agency is designated as the state health planning agency for purposes of federal law.

(2) In the exercise of its authority to issue licenses to health care facilities and health service providers, as provided under chapters 393, 395, and parts II and VI of chapter 400, the agency may not issue a license to any health care facility, health service provider, hospice, or part of a health care facility which fails to receive a certificate of need or an exemption for the licensed facility or service.

(3) The agency shall establish, by rule, uniform need methodologies for health services and health facilities. In developing uniform need methodologies, the agency shall, at a minimum, consider the demographic characteristics of the population, the health status of the population, service use patterns, standards and trends, geographic accessibility, and market economics.

(4) Prior to determining that there is a need for additional community nursing facility beds in any area of the state, the agency shall determine that the need cannot be met through the provision, enhancement, or expansion of home and community-based services. In determining such need, the agency shall examine nursing home placement patterns and demographic patterns of persons entering nursing homes and the availability of and effectiveness of existing home-based and community-based service delivery systems at meeting the long-term care needs of the population. The agency shall

recommend to the Office of Long-Term Care Policy changes that could be made to existing home-based and community-based delivery systems to lessen the need for additional nursing facility beds.

(5)~~(4)~~ The agency shall establish by rule a nursing-home-bed-need methodology that reduces the community nursing home bed need for the areas of the state where the agency establishes pilot community diversion programs through the Title XIX aging waiver program.

(6)~~(5)~~ The agency may adopt rules necessary to implement ss. 408.031-408.045.

Section 15. Paragraph (f) of subsection (3) of section 409.912, Florida Statutes, is amended, and present subsections (13) through (39) of said section are renumbered as subsections (14) through (40), respectively, and a new subsection (13) is added to that section, to read:

409.912 Cost-effective purchasing of health care.--The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency may establish prior authorization requirements for certain populations of Medicaid beneficiaries, certain drug

classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization.

(3) The agency may contract with:

(f) An entity that provides in-home physician services to test the cost-effectiveness of enhanced home-based medical care to Medicaid recipients with degenerative neurological diseases and other diseases or disabling conditions associated with high costs to Medicaid. The program shall be designed to serve very disabled persons and to reduce Medicaid reimbursed costs for inpatient, outpatient, and emergency department services. The agency shall contract with vendors on a risk-sharing basis.~~in Pasco County or Pinellas County that provides in-home physician services to Medicaid recipients with degenerative neurological diseases in order to test the cost-effectiveness of enhanced home-based medical care. The entity providing the services shall be reimbursed on a fee-for-service basis at a rate not less than comparable Medicare reimbursement rates. The agency may apply for waivers of federal regulations necessary to implement such program. This paragraph shall be repealed on July 1, 2002.~~

(13)(a) The agency shall operate the Comprehensive Assessment and Review (CARES) nursing facility preadmission screening program to ensure that Medicaid payment for nursing facility care is made only for individuals whose conditions require such care and to ensure that long-term care services are provided in the setting most appropriate to the needs of

the person and in the most economical manner possible. The CARES program shall also ensure that individuals participating in Medicaid home and community-based waiver programs meet criteria for those programs, consistent with approved federal waivers.

(b) The agency shall operate the CARES program through an interagency agreement with the Department of Elderly Affairs.

(c) Prior to making payment for nursing facility services for a Medicaid recipient, the agency must verify that the nursing facility preadmission screening program has determined that the individual requires nursing facility care and that the individual cannot be safely served in community-based programs. The nursing facility preadmission screening program shall refer a Medicaid recipient to a community-based program if the individual could be safely served at a lower cost and the recipient chooses to participate in such program.

(d) By January 1 of each year, the agency shall submit a report to the Legislature and the Office of Long-Term Care Policy describing the operations of the CARES program. The report must describe:

1. Rate of diversion to community alternative programs;

2. CARES program staffing needs to achieve additional diversions;

3. Reasons the program is unable to place individuals in less restrictive settings when such individuals desired such services and could have been served in such settings;

4. Barriers to appropriate placement, including barriers due to policies or operations of other agencies or

state-funded programs; and

5. Statutory changes necessary to ensure that individuals in need of long-term care services receive care in the least restrictive environment.

Section 16. Section 430.7031, Florida Statutes, is created to read:

430.7031 Nursing home transition program.--The department and the Agency for Health Care Administration:

(1) Shall implement a system of care designed to assist individuals residing in nursing homes to regain independence and to move to less costly settings.

(2) Shall collaboratively work to identify long-stay nursing home residents who are able to move to community placements, and to provide case management and supportive services to such individuals while they are in nursing homes to assist such individuals in moving to less expensive and less restrictive settings.

(3) Shall modify existing service delivery systems or develop new service delivery systems to economically and efficiently meet such individuals' care needs.

(4) Shall offer such individuals priority placement and services in all home-based and community-based care programs and shall ensure that funds are available to provide services to individuals to whom services are offered.

(5) May seek federal waivers necessary to administer this section.

Section 17. Subsection (4) of section 409.908, Florida Statutes, is amended to read:

409.908 Reimbursement of Medicaid providers.--Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law,

according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(4) Subject to any limitations or directions provided for in the General Appropriations Act, alternative health plans, health maintenance organizations, and prepaid health plans shall be reimbursed a fixed, prepaid amount negotiated, or competitively bid pursuant to s. 287.057, by the agency and prospectively paid to the provider monthly for each Medicaid recipient enrolled. The amount may not exceed the average amount the agency determines it would have paid, based on claims experience, for recipients in the same or similar category of eligibility. The agency shall calculate capitation rates on a regional basis and, beginning September 1, 1995, shall include age-band differentials in such calculations. Effective July 1, 2001, the cost of exempting

statutory teaching hospitals, specialty hospitals, and community hospital education program hospitals from reimbursement ceilings and the cost of special Medicaid payments shall not be included in premiums paid to health maintenance organizations or prepaid health care plans. Each rate semester, the agency shall calculate and publish a Medicaid hospital rate schedule that does not reflect either special Medicaid payments or the elimination of rate reimbursement ceilings, to be used by hospitals and Medicaid health maintenance organizations, in order to determine the Medicaid rate referred to in ss. 409.912(17)~~409.912(16)~~, 409.9128(5), and 641.513(6).

Section 18. Section 430.708, Florida Statutes, is amended to read:

430.708 Certificate of need.--To ensure that Medicaid community diversion pilot projects result in a reduction in the projected average monthly nursing home caseload, the agency shall, in accordance with the provisions of s. 408.034(5)~~s. 408.034(4)~~:

(1) Reduce the projected nursing home bed need in each certificate-of-need batching cycle in the community diversion pilot project areas.

(2) Reduce the conditions imposed on existing nursing homes or those to be constructed, in accordance with the number of projected community diversion slots.

(3) Adopt rules to reduce the number of beds in Medicaid-participating nursing homes eligible for Medicaid, through a Medicaid-selective contracting process or some other appropriate method.

(4) Determine the feasibility of increasing the nursing home occupancy threshold used in determining nursing

home bed needs under the certificate-of-need process.

Section 19. Subsection (4) of section 641.386, Florida Statutes, is amended to read:

641.386 Agent licensing and appointment required; exceptions.--

(4) All agents and health maintenance organizations shall comply with and be subject to the applicable provisions of ss. 641.309 and 409.912(19)~~409.912(18)~~, and all companies and entities appointing agents shall comply with s. 626.451, when marketing for any health maintenance organization licensed pursuant to this part, including those organizations under contract with the Agency for Health Care Administration to provide health care services to Medicaid recipients or any private entity providing health care services to Medicaid recipients pursuant to a prepaid health plan contract with the Agency for Health Care Administration.

Section 20. Subsection (4) of section 20.41, Florida Statutes, is amended to read:

20.41 Department of Elderly Affairs.--There is created a Department of Elderly Affairs.

(4) The department shall administer ~~administratively house~~ the State Long-Term Care Ombudsman Council, created by s. 400.0067, and the local long-term care ombudsman councils, created by s. 400.0069 and shall, as required by s. 712 of the federal Older Americans Act of 1965, ensure that both the state and local long-term care ombudsman councils operate in compliance with the Older Americans Act. ~~The councils in performance of their duties shall not be subject to control, supervision, or direction by the department.~~

Section 21. Subsection (1) and paragraph (b) of subsection (2) of section 400.0063, Florida Statutes, are

amended to read:

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

(1) There is created an Office of State Long-Term Care Ombudsman~~, which shall be located for administrative purposes~~ in the Department of Elderly Affairs.

(2)

(b) The State Long-Term Care Ombudsman shall be appointed by and shall serve at the pleasure of the Secretary of Elderly Affairs ~~State Long-Term Care Ombudsman Council~~. No person who has a conflict of interest, or has an immediate family member who has a conflict of interest, may be involved in the designation of the ombudsman.

Section 22. Paragraphs (c) and (f) of subsection (2) and subsection (3) of section 400.0065, Florida Statutes, are amended to read:

400.0065 State Long-Term Care Ombudsman; duties and responsibilities; conflict of interest.--

(2) The State Long-Term Care Ombudsman shall have the duty and authority to:

(c) Within the limits of federal and state funding authorized and appropriated, employ such personnel, including staff for local ombudsman councils, as are necessary to perform adequately the functions of the office and provide or contract for legal services to assist the state and local ombudsman councils in the performance of their duties. Staff positions for each local ombudsman council may be established as career service positions, and shall be filled by the ombudsman after approval by the secretary ~~consultation with the respective local ombudsman council~~.

~~(f) Annually prepare a budget request that shall be~~

~~submitted to the Governor by the department for transmittal to the Legislature.~~

(3) The State Long-Term Care Ombudsman shall not:

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

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

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

The Department of Elderly Affairs~~, in consultation with the ombudsman,~~ shall adopt rules to establish procedures to identify and eliminate conflicts of interest as described in this subsection.

Section 23. Paragraphs (c), (d), (f), and (g) of subsection (2) and paragraph (b) of subsection (3) of section 400.0067, Florida Statutes, are amended to read:

400.0067 Establishment of State Long-Term Care Ombudsman Council; duties; membership.--

(2) The State Long-Term Care Ombudsman Council shall:

(c) Assist the ombudsman to discover, investigate, and determine the existence of abuse or neglect in any long-term care facility.~~and to develop procedures, in consultation with~~ The Department of Elderly Affairs shall develop procedures~~,~~ relating to such investigations. Investigations may consist, in part, of one or more onsite administrative inspections.

(d) Assist the ombudsman in eliciting, receiving,

responding to, and resolving complaints made by or on behalf of long-term care facility residents and in developing procedures~~, in consultation with the Department of Elderly Affairs,~~ relating to the receipt and resolution of such complaints. The secretary shall approve all such procedures.

~~(f) Be authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties, including assistance from the adult protective services program of the Department of Children and Family Services.~~

(f)~~(g)~~ Prepare an annual report describing the activities carried out by the ombudsman and the State Long-Term Care Ombudsman Council in the year for which the report is prepared. The State Long-Term Care Ombudsman Council shall submit the report to the Secretary of Elderly Affairs. The secretary shall in turn submit the report to the Commissioner of the United States Administration on Aging, the Governor, the President of the Senate, the Speaker of the House of Representatives, the minority leaders of the House and Senate, the chairpersons of appropriate House and Senate committees, the Secretary of ~~Secretaries of Elderly Affairs and~~ Children and Family Services, and the Secretary of Health Care Administration. The report shall be submitted by the Secretary of Elderly Affairs at least 30 days before the convening of the regular session of the Legislature and shall, at a minimum:

1. Contain and analyze data collected concerning complaints about and conditions in long-term care facilities.

2. Evaluate the problems experienced by residents of long-term care facilities.

3. Contain recommendations for improving the quality

of life of the residents and for protecting the health, safety, welfare, and rights of the residents.

4. Analyze the success of the ombudsman program during the preceding year and identify the barriers that prevent the optimal operation of the program. The report of the program's successes shall also address the relationship between the state long-term care ombudsman program, the Department of Elderly Affairs, the Agency for Health Care Administration, and the Department of Children and Family Services, and an assessment of how successfully the state long-term care ombudsman program has carried out its responsibilities under the Older Americans Act.

5. Provide policy and regulatory and legislative recommendations to solve identified problems; resolve residents' complaints; improve the quality of care and life of the residents; protect the health, safety, welfare, and rights of the residents; and remove the barriers to the optimal operation of the state long-term care ombudsman program.

6. Contain recommendations from the local ombudsman councils regarding program functions and activities.

7. Include a report on the activities of the legal advocate and other legal advocates acting on behalf of the local and state councils.

(3)

(b)1. The ombudsman, in consultation with the secretary ~~and the state ombudsman council~~, shall submit to the Governor a list of at least eight names of persons who are not serving on a local council.

2. The Governor shall appoint three members chosen from the list, at least one of whom must be over 60 years of age.

3. If the Governor's appointments are not made within 60 days after the ombudsman submits the list, the ombudsman, in consultation with the secretary ~~State Long-Term Care Ombudsman Council~~, shall appoint three members, one of whom must be over 60 years of age.

Section 24. Subsection (4) of section 400.0069, Florida Statutes, is amended to read:

400.0069 Local long-term care ombudsman councils; duties; membership.--

(4) Each local ombudsman council shall be composed of no less than 15 members and no more than 40 ~~30~~ members from the local planning and service area, to include the following: one medical or osteopathic physician whose practice includes or has included a substantial number of geriatric patients and who may have limited practice in a long-term care facility; one registered nurse who has geriatric experience, if possible; one licensed pharmacist; one registered dietitian; at least six nursing home residents or representative consumer advocates for nursing home residents; at least three residents of assisted living facilities or adult family-care homes or three representative consumer advocates for long-term care facility residents; one attorney; and one professional social worker. In no case shall the medical director of a long-term care facility or an employee of the Agency for Health Care Administration, the Department of Children and Family Services, or the Department of Elderly Affairs serve as a member or as an ex officio member of a council. Each member of the council shall certify that neither the council member nor any member of the council member's immediate family has any conflict of interest pursuant to subsection (10). Local ombudsman councils are encouraged to recruit council members

who are 60 years of age or older.

Section 25. Subsection (1) of section 400.0071, Florida Statutes, is amended to read:

400.0071 Complaint procedures.--

(1) The state ombudsman council shall recommend to the ombudsman and the secretary ~~establish~~ state and local procedures for receiving complaints against a nursing home or long-term care facility or its employee. The procedures shall be implemented after the approval of the ombudsman and the secretary.

Section 26. Subsections (1) and (2) of section 400.0087, Florida Statutes, are amended to read:

400.0087 Agency oversight.--

(1) The Department of Elderly Affairs shall monitor the local ombudsman councils responsible for carrying out the duties delegated by s. 400.0069 and federal law. The department, in consultation with the ombudsman ~~and the State Long-Term Care Ombudsman Council~~, shall adopt rules to establish the policies and procedures for the monitoring of local ombudsman councils.

(2) The department is responsible for ensuring that the Office of State Long-Term Care Ombudsman ~~prepares its annual report;~~provides information to public and private agencies, legislators, and others; provides appropriate training to representatives of the office or of the state or local long-term care ombudsman councils; and coordinates ombudsman services with the Advocacy Center for Persons with Disabilities and with providers of legal services to residents of long-term care facilities in compliance with state and federal laws.

Section 27. Section 400.0089, Florida Statutes, is

amended to read:

400.0089 Agency reports.--The ~~State Long-Term Care Ombudsman Council, shall, in cooperation with the~~ Department of Elderly Affairs shall~~,~~ maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities and to residents, for the purpose of identifying and resolving significant problems. The department and the State Long-Term Care Ombudsman Council shall submit such data as part of its annual report required pursuant to s. 400.0067(2)(g) to the Agency for Health Care Administration, the Department of Children and Family Services, the Florida Statewide Advocacy Council, the Advocacy Center for Persons with Disabilities, the Commissioner for the United States Administration on Aging, the National Ombudsman Resource Center, and any other state or federal entities that the ombudsman determines appropriate. The State Long-Term Care Ombudsman Council shall publish quarterly and make readily available information pertaining to the number and types of complaints received by the long-term care ombudsman program.

Section 28. Section 400.0091, Florida Statutes, is amended to read:

400.0091 Training.--The ombudsman shall provide appropriate training to all employees of the Office of State Long-Term Care Ombudsman and to the state and local long-term care ombudsman councils, including all unpaid volunteers. All volunteers and appropriate employees of the Office of the State Long-Term Care Ombudsman must be given a minimum of 20 hours of training upon employment or enrollment as a volunteer and 10 hours of continuing education annually thereafter. Training must cover, at a minimum, guardianships and powers of

attorney, medication administration, care and medication of residents with dementia and Alzheimer's disease, accounting for residents' funds, discharge rights and responsibilities, and cultural sensitivity.No employee, officer, or representative of the office or of the state or local long-term care ombudsman councils, other than the ombudsman, may carry out any authorized ombudsman duty or responsibility unless the person has received the training required by this section and has been approved by the ombudsman as qualified to carry out ombudsman activities on behalf of the office or the state or local long-term care ombudsman councils.

Section 29. Paragraph (d) of subsection (5) of section 400.179, Florida Statutes, is amended to read:

400.179 Sale or transfer of ownership of a nursing facility; liability for Medicaid underpayments and overpayments.--

(5) Because any transfer of a nursing facility may expose the fact that Medicaid may have underpaid or overpaid the transferor, and because in most instances, any such underpayment or overpayment can only be determined following a formal field audit, the liabilities for any such underpayments or overpayments shall be as follows:

(d) Where the transfer involves a facility that has been leased by the transferor:

1. The transferee shall, as a condition to being issued a license by the agency, acquire, maintain, and provide proof to the agency of a bond with a term of 30 months, renewable annually, in an amount not less than the total of 3 months Medicaid payments to the facility computed on the basis of the preceding 12-month average Medicaid payments to the facility.

2. The leasehold operator may meet the bond requirement through other arrangements acceptable to the department.

3. All existing nursing facility licensees, operating the facility as a leasehold, shall acquire, maintain, and provide proof to the agency of the 30-month bond required in subparagraph 1., above, on and after July 1, 1993, for each license renewal.

4. It shall be the responsibility of all nursing facility operators, operating the facility as a leasehold, to renew the 30-month bond and to provide proof of such renewal to the agency annually at the time of application for license renewal.

5. Any failure of the nursing facility operator to acquire, maintain, renew annually, or provide proof to the agency shall be grounds for the agency to deny, cancel, revoke, or suspend the facility license to operate such facility and to take any further action, including, but not limited to, enjoining the facility, asserting a moratorium, or applying for a receiver, deemed necessary to ensure compliance with this section and to safeguard and protect the health, safety, and welfare of the facility's residents. A lease agreement required as a condition of bond financing or refinancing under s. 154.213 by a health facilities authority or required under s. 159.30 by a county or municipality is not a leasehold for purposes of this paragraph and is not subject to the bond requirement of this paragraph.

Section 30. Subsection (20) of section 400.141, Florida Statutes, is amended to read:

400.141 Administration and management of nursing home facilities.--Every licensed facility shall comply with all

applicable standards and rules of the agency and shall:

(20) Maintain general and professional liability insurance coverage that is in force at all times. However, a state-designated teaching nursing home created under s. 430.80 may demonstrate proof of financial responsibility as provided in s. 430.80(3)(h); provided that this provision shall expire July 1, 2005.

Section 31. Paragraph (h) is added to subsection (3) of section 430.80, Florida Statutes, to read:

430.80 Implementation of a teaching nursing home pilot project.--

(3) To be designated as a teaching nursing home, a nursing home licensee must, at a minimum:

(h) Maintain proof of financial responsibility in a minimum amount of $750,000. Such proof of financial responsibility may include:

1. Maintaining an escrow account consisting of cash or assets eligible for deposit in accordance with s. 625.52; or

2. Obtaining and maintaining pursuant to chapter 675 an unexpired, irrevocable, nontransferable and nonassignable letter of credit issued by any bank or savings association organized and existing under the laws of this state or any bank or savings association organized under the laws of the United States that has its principal place of business in this state or has a branch office which is authorized to receive deposits in this state. The letter of credit shall be used to satisfy the obligation of the facility upon presentment of a final judgment indicating liability and awarding damages to be paid by the facility or upon presentment of a settlement agreement signed by all parties to the agreement when such final judgment or settlement is a result of a liability claim

against the facility.

Section 32. Subsection (1) of section 477.025, Florida Statutes, is amended, and subsection (11) is added to said section, to read:

477.025 Cosmetology salons; specialty salons; requisites; licensure; inspection; mobile cosmetology salons.--

(1) No cosmetology salon or specialty salon shall be permitted to operate without a license issued by the department except as provided in subsection (11).

(11) Facilities licensed under part II or part III of chapter 400 shall be exempt from the provisions of this section and a cosmetologist licensed pursuant to s. 477.019 may provide salon services exclusively for facility residents.

Section 33. Section 627.9408, Florida Statutes, is amended to read:

627.9408 Rules.--

(1) The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

(2) The department may adopt by rule the provisions of the Long-Term Care Insurance Model Regulation adopted by the National Association of Insurance Commissioners in the second quarter of the year 2000 which are not in conflict with the Florida Insurance Code.

Section 34. Subsections (2) and (3) of section 400.0066, Florida Statutes, are repealed.

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

And the title is amended as follows:

On page 3, line 26, after the semicolon,

insert:

creating s. 409.221, F.S.; creating the "Florida Consumer-Directed Care Act"; providing legislative findings; providing legislative intent; establishing the consumer-directed care program; providing for consumer selection of certain long-term care services and providers; providing for interagency agreements among the Agency for Health Care Administration and the Department of Elderly Affairs, the Department of Health, and the Department of Children and Family Services; providing for program eligibility and enrollment; providing definitions; providing for consumer budget allowances and purchasing guidelines; specifying authorized services; providing roles and responsibilities of consumers, the agency and departments, and fiduciary intermediaries; providing background screening requirements for persons who render care under the program; providing rulemaking authority of the agency and departments; requiring the agency to apply for federal waivers as necessary; requiring ongoing program reviews and annual reports; requiring the Agency for Health Care Administration and the Department of Elderly Affairs to submit a plan to the Governor and Legislature for reducing nursing home bed days funded under the Medicaid program; amending s.

408.034, F.S.; providing additional requirements for the Agency for Health Care Administration in determining the need for additional nursing facility beds; amending s. 409.912, F.S.; authorizing the Agency for Health Care Administration to contract with vendors on a risk-sharing basis for in-home physician services; requiring the Agency for Health Care Administration to establish a nursing facility preadmission screening program through an interagency agreement with the Department of Elderly Affairs; requiring an annual report to the Legislature and the Office of Long-Term Care Policy; creating s. 430.7031, F.S.; requiring the Department of Elderly Affairs and the Agency for Health Care Administration to implement a nursing home transition program; providing requirements for the program; amending ss. 409.908, 430.708, and 641.386, F.S., relating to reimbursement of Medicaid providers, certificates of need, and agent licensing and appointment; conforming cross references to changes made by the act; amending s. 20.41, F.S.; providing for administration of the State Long-Term Care Ombudsman Council by the Department of Elderly Affairs; amending s. 400.0063, F.S.; locating the Office of the State Long-Term Care Ombudsman in the department; providing for appointment of the ombudsman by the Secretary of Elderly Affairs; amending s. 400.0065, F.S.;

requiring the secretary's approval of staff for the local ombudsman councils; deleting requirement that the ombudsman prepare an annual legislative budget request; revising rulemaking authority; amending s. 400.0067, F.S.; revising duties of the State Long-Term Care Ombudsman Council; providing duties of the department and secretary; amending s. 400.0069, F.S.; increasing the maximum membership of the local long-term care ombudsman councils; amending s. 400.0071, F.S.; revising procedures relating to complaints; amending s. 400.0087, F.S.; revising provisions relating to agency oversight; amending s. 400.0089, F.S.; revising reporting responsibilities; requiring the State Long-Term Care Ombudsman Council to publish complaint information quarterly; amending s. 400.0091, F.S.; specifying training requirements for employees of the Office of the State Long-Term Care Ombudsman and its volunteers; amending s. 400.179, F.S.; providing an exemption from certain requirements that the transferor of a nursing facility maintain a bond; amending s. 400.141, F.S.; requiring nursing home facilities to maintain general and professional liability insurance coverage; authorizing state-designated teaching nursing homes to demonstrate certain proof of financial responsibility; amending s. 430.80, F.S.; specifying the minimum proof of financial

responsibility required for state-designated teaching nursing homes; amending s. 477.025, F.S.; exempting certain facilities from a provision of law requiring licensing as a cosmetology salon; amending s. 627.9408, F.S.; authorizing the department to adopt by rule certain provisions of the Long-Term Care Insurance Model Regulation, as adopted by the National Association of Insurance Commissioners; repealing s. 400.0066(2) and (3), F.S., relating to the Office of State Long-Term Care Ombudsman; deleting a prohibition on interference with the official duty of any ombudsman staff or volunteers; deleting reference to administrative support by the Department of Elderly Affairs;