

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 414
 SPONSOR: Health, Aging and Long-Term Care Committee
 SUBJECT: Long-Term Care Ombudsman Program
 DATE: December 3, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Wilson	HC	Favorable
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 414 increases the maximum number of members on a local long-term care ombudsman council to 40 members. The State Long-Term Care Ombudsman Council is required to publish quarterly reports of the number and types of complaints received. All volunteers and appropriate employees of the Office of the State Long-Term Care Ombudsman must be given 20 hours of initial training and 10 hours of continuing education annually on subjects specified in the bill.

This bill substantially amends ss. 400.0069, 400.0089 and 400.0091, F.S.

II. Present Situation:

Long-term care ombudsmen are volunteer advocates for residents of nursing homes, board and care homes, assisted living facilities and similar adult care facilities. They provide an ongoing presence in long-term care facilities, monitoring resident care and facility conditions.

The Long-Term Care Ombudsman Program began as a federal demonstration project operated in five states. In 1973, the projects were formally assigned to the Administration on Aging within the federal Department of Health and Human Services. In 1978, Congress codified the Ombudsman Program in the Older Americans Act and made such programs mandatory. Title VII of the Older Americans Act (OAA) delineates the responsibilities for ombudsmen that include identifying, investigating, and resolving complaints made by or on behalf of residents; representing the interests of residents before governmental agencies; educating and informing consumers and the general public regarding issues and concerns related to long-term care; facilitating public comment on laws, regulations, policies and actions; and promoting the development of citizen organizations to participate in the program.

The Florida Long-Term Care Ombudsman Program (LTCOP) was initiated in 1975 under chapter 75-233, Laws of Florida. The Legislature's intent was to create a volunteer-based program to discover, investigate and remedy conditions that constitute a threat to the rights, health, safety or welfare of residents of long-term care facilities and to conduct investigations to further the enforcement of laws, rules and regulations that safeguard the health, safety and welfare of residents. The statutory authority for the LTCOP is found in part I of chapter 400, F.S.

Based upon reports by the Federal Institute of Medicine and the General Accounting Office documenting widespread quality of care deficiencies in nursing homes, Congress passed the Omnibus Budget Reconciliation Act of 1987 (OBRA), P.L.No. 100-203. OBRA expanded the Medicare requirements of nursing homes and strengthened the rights of residents to be free of physical or mental abuse, and the right to be free from chemical and physical restraints under 42 USC sections 1396a and 1396r. An essential aspect of the appropriations contained in OBRA 1987 was the inception of federal funding for state long-term care ombudsman programs.

Amendments to the OAA in 1992 provided that, as a condition of receiving federal funding under OBRA, the state long-term care ombudsman programs were required to:

- Identify, investigate and resolve complaints made by or on behalf of residents of long-term care facilities that relate to the health, safety or welfare of the resident.
- Provide services to assist residents in assuring their health, safety and welfare.
- Inform residents of means of obtaining necessary care from providers and applicable social service agencies.
- Represent the interests of residents before governmental agencies and seek administrative and legal remedies to protect resident health, safety and welfare.
- Monitor, analyze and comment on the development and implementation of federal, state and local laws, and regulations and policies that pertain to resident health, safety and welfare.
- Provide training for ombudsmen.
- Avoid contracting with the state agency responsible for long-term care facility licensing and certification, to preclude conflicts of interest.
- Ensure that all ombudsmen are competent to carry out their responsibilities and are free from personal conflicts of interest.
- Develop policies and procedures to assure resident confidentiality and privacy.
- Ensure ombudsman access to long-term care facilities and records.
- Establish a statewide uniform reporting system to collect and analyze complaints and deficiencies.
- Ensure that adequate legal counsel is available to the ombudsmen and that such counsel is free from representational conflicts of interest.
- Prepare a report of ombudsman activities and complaint resolution data.
- Provide indemnification from liability for ombudsmen acting in good faith under the law.
- Ensure noninterference with the independence of the ombudsman program.

In contrast to other health and residential facility oversight programs, ombudsmen lack enforcement and regulatory oversight authority. As independent advocates, they work solely on behalf of residents and seek 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 conducive to the candid voicing of resident complaints. As well, the LTCOP is distinct from other agencies in its significant reliance on volunteers.

In Florida, the LTCOP consists of a State Long-Term Care Ombudsman, State Long-Term Care Ombudsman Council and 14 district councils under sections 400.0063, 400.0067 and 400.0069, F.S. Each district council is comprised of 15 to 30 members under section 400.0069(4), F.S. The councils are required to conduct annual inspections of all long-term care facilities in the council's jurisdiction and to undertake complaint investigations as necessary under section 400.0073(4), F.S. The LTCOP maintains a toll-free complaint telephone line. Local councils meet monthly and the state council meets quarterly. The LTCOP is required to maintain a statewide uniform data collection and analysis system for long-term care statistics and to prepare an annual report incorporating such data under sections 400.0089 and 400.0067(2)(g), F.S. Comprehensive training must be provided to all ombudsmen under section 400.0091, F.S.

As part of its administrative oversight over the LTCOP, the Department of Elder Affairs is required to enact administrative rules regarding: elimination of conflicts of interest, assurance of access to facilities, and establishment of policies and procedures of individual ombudsman councils under sections 400.0065(3), 400.0081(3) and 400.0087(1), F.S. Such rules regarding conflicts of interest, facility access and policies and procedures are respectively codified at 58L-1, 58L-2 and 58L-3, Florida Administrative Code.

Long-term care facilities in Florida are comprised of nursing homes (744 facilities with 81,918 beds), assisted living facilities (2,566 facilities with 84,017 beds), and adult family care homes (351 facilities with 1,454 beds) for a total of 3,661 facilities and 167,389 beds. The LTCOP staffing is in constant flux, but typically approximates 260 (17.5 paid FTEs and the remainder volunteers). These ombudsmen accomplished 2,886 routine inspections (78.8 percent of the 3,661 facilities) and 8,040 complaint investigations during the 1999-2000 fiscal year. Based upon preliminary data, volumes for the 2000-2001 year will be comparable to the previous year.

Funding for the LTCOP for fiscal year 1999-2000 was \$1.27 million (78.5 percent OAA funds and 21.5 percent general revenue), for 2000-2001 was \$1.35 million (74.9 percent OAA and 25.1 percent general revenue), and for 2001-2002 is \$2.28 million (47.1 percent OAA and 52.9 percent general revenue).

Senate Interim Project No. 2002-137 reviewed the operation of the long-term care ombudsman program and made the following recommendations:

- Retargeting of ombudsman investigations and training to emphasize the quality of life of residents and reduce the emphasis on facility inspections that duplicate Agency for Health Care Administration surveys.
- Expansion of the statutory maximum council size from 30 to 40 ombudsmen to enhance coverage of the state's larger districts under section 400.0069(4), F.S.
- Training of ombudsman as to: guardianships and powers of attorney; medication administration; care and medication of dementia and Alzheimer's residents; accounting

for resident funds; discharge rights and responsibilities; and cultural sensitivity and diversity under section 400.0091, F.S.

- Convening workshops between the LTCOP and officials from the Agency for Health Care Administration, Department of Elder Affairs and Department of Children and Family Services to better coordinate communication and operations.
- Initiation of a statewide public information campaign to increase LTCOP visibility and bolster public awareness.
- Improvement of the LTCOP's management and data information systems capability under section 400.0089, F.S.
- Reassignment of ombudsmen to a more representative proportion of assisted living facility grievances.
- Recruitment of additional multilingual ombudsmen.

III. Effect of Proposed Changes:

SB 414 amends s. 400.0069, F.S., which governs local long-term care ombudsman councils. The maximum number of council members is increased from 30 to 40.

The bill amends s. 400.0089, F.S., to require the State Long-Term Care Ombudsman Council to publish quarterly reports regarding the number and types of complaints received by the long-term care ombudsman program. This quarterly reporting will supplement the more comprehensive annual report required by this section.

The bill amends s. 400.0091, F.S., to require volunteers and appropriate employees of the Office of the State Long-Term Care Ombudsman to be given a minimum of 20 hours of training upon employment or enrollment as a volunteer. After the initial training, employees and volunteers must be given a minimum of 10 hours of training annually. The training must cover 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.

The bill will take effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Long-Term Care Ombudsman will be able to implement the provisions of the bill within the existing resources of the office.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.