

1 A bill to be entitled
2 An act relating to long-term care; providing
3 legislative findings and intent with respect to
4 the needs of the state's elderly population;
5 requiring the Agency for Health Care
6 Administration and the Department of Elderly
7 Affairs to submit a plan to the Governor and
8 Legislature for reducing nursing-home-bed days
9 funded under the Medicaid program; amending s.
10 408.034, F.S.; providing additional
11 requirements for the Agency for Health Care
12 Administration in determining the need for
13 additional nursing-facility beds; amending s.
14 409.912; requiring the Agency for Health Care
15 Administration to establish a nursing facility
16 preadmission screening program through an
17 interagency agreement with the Department of
18 Elderly Affairs; requiring an annual report to
19 the Legislature and the Office of
20 Long-Term-Care Policy; creating s. 430.041,
21 F.S.; establishing the Office of Long-Term-Care
22 Policy within the Department of Elderly
23 Affairs; requiring the office to make
24 recommendations for coordinating the services
25 provided by state agencies; providing for the
26 appointment of an advisory board to the Office
27 of Long-Term-Care Policy; specifying membership
28 in the advisory board; providing for
29 reimbursement of per diem and travel expenses
30 for members of the advisory board; requiring
31 that the office submit an annual report to the

1 Governor and Legislature; requiring assistance
2 to the office by state agencies and
3 universities; amending s. 430.204, F.S.;
4 providing certain restrictions on
5 community-care-for-the-elderly services;
6 creating s. 430.7031, F.S.; requiring the
7 Department of Elderly Affairs and the Agency
8 for Health Care Administration to implement a
9 nursing home transition program; providing
10 requirements for the program; amending ss.
11 409.908, 430.708, 641.386, F.S., relating to
12 reimbursement of Medicaid providers,
13 certificates of need, and agent licensing and
14 appointment; conforming cross-references to
15 changes made by the act; amending s. 400.0069,
16 F.S.; increasing the maximum membership of the
17 local long-term care ombudsman councils;
18 amending s. 400.0089, F.S.; requiring the State
19 Long-Term Care Ombudsman Council to publish
20 complaint information quarterly; amending s.
21 400.0091, F.S.; specifying training
22 requirements for employees of the Office of the
23 State Long-Term Care Ombudsman and its
24 volunteers; providing an effective date.

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

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28 Section 1. The Legislature finds that the State of
29 Florida does not have a comprehensive and effective strategy
30 for economically and efficiently meeting the long-term-care
31 needs of an increasingly elderly population; that multiple

1 state agencies have responsibilities for oversight, planning,
2 and operation of long-term-care programs; that long-term care
3 is provided by a complex array of public and private entities
4 delivering services; that there has not been a focus on
5 evaluation of innovative and pilot projects and expansion of
6 pilot projects that are successful; that the provision of
7 long-term-care services has not been approached holistically;
8 and that the state does not have a mechanism for ensuring that
9 long-term-care programs are effectively and efficiently
10 operated and coordinated to comply with the policies set out
11 in Florida Statutes. It is therefore the intent of the
12 Legislature to increase the rate of diversion of elderly
13 persons in need of long-term care to noninstitutional
14 alternatives; to increase coordination, evaluation, and
15 planning for the state's long-term-care system; to expand
16 successful pilot programs; and to establish a nursing facility
17 preadmission screening program.

18 Section 2. (1) Prior to December 1, 2002, the Agency
19 for Health Care Administration in consultation with the
20 Department of Elderly Affairs shall submit to the Governor,
21 the President of the Senate, and the Speaker of the House of
22 Representatives a plan to reduce the number of
23 nursing-home-bed days purchased by the state Medicaid program
24 and to replace such nursing home care with care provided in
25 less costly alternative settings.

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

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

1 Section 3. Section 408.034, Florida Statutes, is
2 amended to read:

3 408.034 Duties and responsibilities of agency;
4 rules.--

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

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

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

26 (4) Prior to determining that there is a need for
27 additional community nursing-facility beds in any area of the
28 state, the agency shall determine that the need cannot be met
29 through the provision, enhancement, or expansion of home and
30 community-based services. In determining such need, the agency
31 shall examine nursing-home-placement patterns and demographic

1 patterns of persons entering nursing homes and the
2 availability of and effectiveness of existing home-based and
3 community-based service delivery systems at meeting the
4 long-term-care needs of the population. The agency shall
5 recommend to the Office of Long-Term-Care Policy changes that
6 could be made to existing home-based and community-based
7 delivery systems to lessen the need for additional
8 nursing-facility beds.

9 ~~(5)(4)~~ The agency shall establish by rule a
10 nursing-home-bed-need methodology that reduces the community
11 nursing home bed need for the areas of the state where the
12 agency establishes pilot community diversion programs through
13 the Title XIX aging waiver program.

14 ~~(6)(5)~~ The agency may adopt rules necessary to
15 implement ss. 408.031-408.045.

16 Section 4. Present subsections (13) through (39) of
17 section 409.912, Florida Statutes, are redesignated as
18 subsections (14) through (40) and a new subsection (13) is
19 added to that section to read:

20 409.912 Cost-effective purchasing of health care.--The
21 agency shall purchase goods and services for Medicaid
22 recipients in the most cost-effective manner consistent with
23 the delivery of quality medical care. The agency shall
24 maximize the use of prepaid per capita and prepaid aggregate
25 fixed-sum basis services when appropriate and other
26 alternative service delivery and reimbursement methodologies,
27 including competitive bidding pursuant to s. 287.057, designed
28 to facilitate the cost-effective purchase of a case-managed
29 continuum of care. The agency shall also require providers to
30 minimize the exposure of recipients to the need for acute
31 inpatient, custodial, and other institutional care and the

1 inappropriate or unnecessary use of high-cost services. The
2 agency may establish prior authorization requirements for
3 certain populations of Medicaid beneficiaries, certain drug
4 classes, or particular drugs to prevent fraud, abuse, overuse,
5 and possible dangerous drug interactions. The Pharmaceutical
6 and Therapeutics Committee shall make recommendations to the
7 agency on drugs for which prior authorization is required. The
8 agency shall inform the Pharmaceutical and Therapeutics
9 Committee of its decisions regarding drugs subject to prior
10 authorization.

11 (13)(a) The agency shall operate the Comprehensive
12 Assessment and Review (CARES) nursing facility preadmission
13 screening program to ensure that Medicaid payment for nursing
14 facility care is made only for individuals whose conditions
15 require such care and to ensure that long-term-care services
16 are provided in the setting most appropriate to the needs of
17 the person and in the most economical manner possible. The
18 CARES program shall also ensure that individuals participating
19 in Medicaid home and community-based waiver programs meet
20 criteria for those programs, consistent with approved federal
21 waivers.

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

25 (c) Prior to making payment for nursing facility
26 services for a Medicaid recipient, the agency must verify that
27 the nursing facility preadmission screening program has
28 determined that the individual requires nursing facility care
29 and that the individual cannot be safely served in
30 community-based programs. The nursing facility preadmission
31 screening program shall refer a Medicaid recipient to a

1 community-based program if the individual could be safely
2 served at a lower cost and the recipient chooses to
3 participate in such program.

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

8 1. Rate of diversion to community alternative
9 programs;

10 2. CARES program staffing needs to achieve additional
11 diversions;

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

15 4. Barriers to appropriate placement, including
16 barriers due to policies or operations of other agencies or
17 state-funded programs; and

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

21 Section 5. Section 430.041, Florida Statutes, is
22 created to read:

23 430.041 Office of Long-Term-Care Policy.--

24 (1) There is established in the Department of Elderly
25 Affairs the Office of Long-Term-Care Policy to evaluate the
26 state's long-term-care service delivery system and make
27 recommendations to increase the availability and the use of
28 noninstitutional settings to provide care to the elderly and
29 ensure coordination among the agencies responsible for the
30 long-term-care continuum.

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1 (2) The purpose of the Office of Long-Term-Care Policy
2 is to:

3 (a) Ensure close communication and coordination among
4 state agencies involved in developing and administering a more
5 efficient and coordinated long-term-care service delivery
6 system in this state;

7 (b) Identify duplication and unnecessary service
8 provision in the long-term-care system and make
9 recommendations to decrease inappropriate service provision;

10 (c) Review current programs providing long-term-care
11 services to determine whether the programs are cost effective,
12 of high quality, and operating efficiently and make
13 recommendations to increase consistency and effectiveness in
14 the state's long-term-care programs;

15 (d) Develop strategies for promoting and implementing
16 cost-effective home and community-based services as an
17 alternative to institutional care which coordinate and
18 integrate the continuum of care needs of the elderly; and

19 (e) Assist the Office of Long-Term-Care Policy
20 Advisory Council as necessary to help implement this section.

21 (3) The Director of the Office of Long-Term-Care
22 Policy shall be appointed by, and serve at the pleasure of,
23 the Governor. The director shall report to, and be under the
24 general supervision of, the Secretary of Elderly Affairs and
25 shall not be subject to supervision by any other employee of
26 the department.

27 (4) The Office of Long-Term-Care Policy shall have an
28 advisory council, whose chair shall be the Director of the
29 Office of Long-Term-Care Policy. The purposes of the advisory
30 council are to provide assistance and direction to the office
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1 and to ensure that the appropriate state agencies are properly
2 implementing recommendations from the office.

3 (a) The advisory council shall consist of:

4 1. A member of the Senate, appointed by the President
5 of the Senate;

6 2. A member of the House of Representatives, appointed
7 by the Speaker of the House of Representatives;

8 3. The Director of the Office of Long-Term-Care
9 Policy;

10 4. The Secretary of Health Care Administration;

11 5. The Secretary of Elderly Affairs;

12 6. The Secretary of Children and Family Services;

13 7. The Secretary of Health;

14 8. The Executive Director of the Department of
15 Veterans' Affairs;

16 9. A representative of the Florida Association of Area
17 Agencies on Aging, appointed by the Governor;

18 10. A representative of the Florida Association of
19 Aging Service Providers, appointed by the Governor;

20 11. A representative of the Florida Association of
21 Homes for the Aging, appointed by the Governor; and

22 12. Two representatives of people using long-term-care
23 services, appointed by the Governor from groups representing
24 elderly persons.

25 (b) Members shall serve without compensation, but are
26 entitled to receive reimbursement for travel and per diem as
27 provided in s. 112.061.

28 (c) The advisory council shall meet at the call of its
29 chair or at the request of a majority of its members. During
30 its first year of existence, the advisory council shall meet
31 at least monthly.

1 (d) Members of the advisory council appointed by the
2 Governor shall serve at the pleasure of the Governor and shall
3 be appointed to 4-year staggered terms in accordance with s.
4 20.052.

5 (5)(a) The Department of Elderly Affairs shall provide
6 administrative support and services to the Office of
7 Long-Term-Care Policy.

8 (b) The office shall call upon appropriate agencies of
9 state government, including the centers on aging in the State
10 University System, for assistance needed in discharging its
11 duties.

12 (c) Each state agency represented on the Office of
13 Long-Term-Care Policy Advisory Council shall make at least one
14 employee available to work with the Office of Long-Term-Care
15 Policy. All state agencies and universities shall assist the
16 office in carrying out its responsibilities prescribed by this
17 section.

18 (d) Each state agency shall pay from its own funds any
19 expenses related to its support of the Office of
20 Long-Term-Care Policy and its participation on the advisory
21 council. The Department of Elderly Affairs shall be
22 responsible for expenses related to participation on the
23 advisory council by members appointed by the Governor.

24 (6)(a) By December 1, 2002, the office shall submit to
25 the advisory council a preliminary report of its findings and
26 recommendations on improving the long-term-care continuum in
27 this state. The report shall contain recommendations and
28 implementation proposals for policy changes, as well as
29 legislative and funding recommendations that will make the
30 system more effective and efficient. The report shall contain
31 a specific plan for accomplishing the recommendations and

1 proposals. Thereafter, the office shall revise and update the
2 report annually and resubmit it to the advisory council for
3 review and comments by November 1 of each year.

4 (b) The advisory council shall review and recommend
5 any suggested changes to the preliminary report, and each
6 subsequent annual update of the report, within 30 days after
7 the receipt of the preliminary report. Suggested revisions,
8 additions, or deletions shall be made to the Director of the
9 Office of Long-Term-Care Policy.

10 (c) The office shall submit its final report, and each
11 subsequent annual update of the report, to the Governor and
12 the Legislature within 30 days after the receipt of any
13 revisions, additions, or deletions suggested by the advisory
14 council, or after the time such comments are due to the
15 office.

16 Section 6. Present subsections (7), (8), and (9) of
17 section 430.204, Florida Statutes, are renumbered as
18 subsections (8), (9), and (10), respectively, and a new
19 subsection (7) is added to that section, to read:

20 430.204 Community-care-for-the-elderly core services;
21 departmental powers and duties.--

22 (7) In no case shall community-care-for-the-elderly
23 services be provided for longer than 60 days if the individual
24 does not complete the application process for establishing
25 eligibility under the Florida Medicaid program.

26 Section 7. Section 430.7031, Florida Statutes, is
27 created to read:

28 430.7031 Nursing home transition program.--The
29 department and the Agency for Health Care Administration:
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1 (1) Shall implement a system of care designed to
2 assist individuals residing in nursing homes to regain
3 independence and to move to less-costly settings.

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

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

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

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

19 Section 8. Subsection (4) of section 409.908, Florida
20 Statutes, is amended to read:

21 409.908 Reimbursement of Medicaid providers.--Subject
22 to specific appropriations, the agency shall reimburse
23 Medicaid providers, in accordance with state and federal law,
24 according to methodologies set forth in the rules of the
25 agency and in policy manuals and handbooks incorporated by
26 reference therein. These methodologies may include fee
27 schedules, reimbursement methods based on cost reporting,
28 negotiated fees, competitive bidding pursuant to s. 287.057,
29 and other mechanisms the agency considers efficient and
30 effective for purchasing services or goods on behalf of
31 recipients. Payment for Medicaid compensable services made on

1 behalf of Medicaid eligible persons is subject to the
2 availability of moneys and any limitations or directions
3 provided for in the General Appropriations Act or chapter 216.
4 Further, nothing in this section shall be construed to prevent
5 or limit the agency from adjusting fees, reimbursement rates,
6 lengths of stay, number of visits, or number of services, or
7 making any other adjustments necessary to comply with the
8 availability of moneys and any limitations or directions
9 provided for in the General Appropriations Act, provided the
10 adjustment is consistent with legislative intent.

11 (4) Subject to any limitations or directions provided
12 for in the General Appropriations Act, alternative health
13 plans, health maintenance organizations, and prepaid health
14 plans shall be reimbursed a fixed, prepaid amount negotiated,
15 or competitively bid pursuant to s. 287.057, by the agency and
16 prospectively paid to the provider monthly for each Medicaid
17 recipient enrolled. The amount may not exceed the average
18 amount the agency determines it would have paid, based on
19 claims experience, for recipients in the same or similar
20 category of eligibility. The agency shall calculate
21 capitation rates on a regional basis and, beginning September
22 1, 1995, shall include age-band differentials in such
23 calculations. Effective July 1, 2001, the cost of exempting
24 statutory teaching hospitals, specialty hospitals, and
25 community hospital education program hospitals from
26 reimbursement ceilings and the cost of special Medicaid
27 payments shall not be included in premiums paid to health
28 maintenance organizations or prepaid health care plans. Each
29 rate semester, the agency shall calculate and publish a
30 Medicaid hospital rate schedule that does not reflect either
31 special Medicaid payments or the elimination of rate

1 reimbursement ceilings, to be used by hospitals and Medicaid
2 health maintenance organizations, in order to determine the
3 Medicaid rate referred to in ss. 409.912(17)~~409.912(16)~~,
4 409.9128(5), and 641.513(6).

5 Section 9. Section 430.708, Florida Statutes, is
6 amended to read:

7 430.708 Certificate of need.--To ensure that Medicaid
8 community diversion pilot projects result in a reduction in
9 the projected average monthly nursing home caseload, the
10 agency shall, in accordance with the provisions of s.
11 408.034(5)~~s. 408.034(4)~~:

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

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

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

22 (4) Determine the feasibility of increasing the
23 nursing home occupancy threshold used in determining nursing
24 home bed needs under the certificate-of-need process.

25 Section 10. Subsection (4) of section 641.386, Florida
26 Statutes, is amended to read:

27 641.386 Agent licensing and appointment required;
28 exceptions.--

29 (4) All agents and health maintenance organizations
30 shall comply with and be subject to the applicable provisions
31 of ss. 641.309 and 409.912(19)~~409.912(18)~~, and all companies

1 and entities appointing agents shall comply with s. 626.451,
2 when marketing for any health maintenance organization
3 licensed pursuant to this part, including those organizations
4 under contract with the Agency for Health Care Administration
5 to provide health care services to Medicaid recipients or any
6 private entity providing health care services to Medicaid
7 recipients pursuant to a prepaid health plan contract with the
8 Agency for Health Care Administration.

9 Section 11. Subsection (4) of section 400.0069,
10 Florida Statutes, is amended to read:

11 400.0069 Local long-term care ombudsman councils;
12 duties; membership.--

13 (4) Each local ombudsman council shall be composed of
14 no less than 15 members and no more than 40 ~~30~~ members from
15 the local planning and service area, to include the following:
16 one medical or osteopathic physician whose practice includes
17 or has included a substantial number of geriatric patients and
18 who may have limited practice in a long-term care facility;
19 one registered nurse who has geriatric experience, if
20 possible; one licensed pharmacist; one registered dietitian;
21 at least six nursing home residents or representative consumer
22 advocates for nursing home residents; at least three residents
23 of assisted living facilities or adult family-care homes or
24 three representative consumer advocates for long-term care
25 facility residents; one attorney; and one professional social
26 worker. In no case shall the medical director of a long-term
27 care facility or an employee of the Agency for Health Care
28 Administration, the Department of Children and Family
29 Services, or the Department of Elderly Affairs serve as a
30 member or as an ex officio member of a council. Each member
31 of the council shall certify that neither the council member

1 nor any member of the council member's immediate family has
2 any conflict of interest pursuant to subsection (10). Local
3 ombudsman councils are encouraged to recruit council members
4 who are 60 years of age or older.

5 Section 12. Section 400.0089, Florida Statutes, is
6 amended to read:

7 400.0089 Agency reports.--The State Long-Term Care
8 Ombudsman Council, shall, in cooperation with the Department
9 of Elderly Affairs, maintain a statewide uniform reporting
10 system to collect and analyze data relating to complaints and
11 conditions in long-term care facilities and to residents, for
12 the purpose of identifying and resolving significant problems.
13 The council shall submit such data as part of its annual
14 report required pursuant to s. 400.0067(2)(g) to the Agency
15 for Health Care Administration, the Department of Children and
16 Family Services, the Florida Statewide Advocacy Council, the
17 Advocacy Center for Persons with Disabilities, the
18 Commissioner for the United States Administration on Aging,
19 the National Ombudsman Resource Center, and any other state or
20 federal entities that the ombudsman determines appropriate.
21 The State Long-Term Care Ombudsman Council shall publish
22 quarterly and make readily available information pertaining to
23 the number and types of complaints received by the long-term
24 care ombudsman program.

25 Section 13. Section 400.0091, Florida Statutes, is
26 amended to read:

27 400.0091 Training.--The ombudsman shall provide
28 appropriate training to all employees of the Office of State
29 Long-Term Care Ombudsman and to the state and local long-term
30 care ombudsman councils, including all unpaid volunteers. All
31 volunteers and appropriate employees of the Office of the

1 State Long-Term Care Ombudsman must be given a minimum of 20
2 hours of training upon employment or enrollment as a volunteer
3 and 10 hours of continuing education annually thereafter.
4 Training must cover, at a minimum, guardianships and powers of
5 attorney, medication administration, care and medication of
6 residents with dementia and Alzheimer's disease, accounting
7 for residents' funds, discharge rights and responsibilities,
8 and cultural sensitivity.No employee, officer, or
9 representative of the office or of the state or local
10 long-term care ombudsman councils, other than the ombudsman,
11 may carry out any authorized ombudsman duty or responsibility
12 unless the person has received the training required by this
13 section and has been approved by the ombudsman as qualified to
14 carry out ombudsman activities on behalf of the office or the
15 state or local long-term care ombudsman councils.

16 Section 14. This act shall take effect July 1, 2002.
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