



370484

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/05/2015	.	
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The Committee on Children, Families, and Elder Affairs (Sobel) 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,



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11 health, safety, and welfare of residents with the purpose of
12 noting needed improvement and making recommendations to enhance
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 Long-Term Care Ombudsman
20 Program. A district may have one or more local councils.

21 (5)~~(4)~~ "Local council" means a local long-term care
22 ombudsman council designated by the ombudsman pursuant to s.
23 400.0069. Local councils are also known as district long-term
24 care ombudsman councils or district councils.

25 (6)~~(5)~~ "Long-term care facility" means a nursing home
26 facility, assisted living facility, adult family-care home,
27 board and care facility, or any other similar residential adult
28 care facility.

29 (7)~~(6)~~ "Office" means the Office of the State Long-Term
30 Care Ombudsman Program created by s. 400.0063.

31 (8)~~(7)~~ "Ombudsman" means an individual who has been
32 certified by the state ombudsman as meeting the requirements of
33 ss. 400.0069, 400.0070, and 400.0091 ~~the individual appointed by~~
34 ~~the Secretary of Elderly Affairs to head the Office of State~~
35 ~~Long-Term Care Ombudsman.~~

36 (9) "Representative of the State Long-Term Care Ombudsman
37 Program" means the state ombudsman, an employee of the state or
38 district office certified as an ombudsman or an individual
39 certified as an ombudsman serving on the state or a local



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40 council.

41 (10)~~(8)~~ "Resident" means an individual 18 ~~60~~ years of age
42 or older who resides in a long-term care facility.

43 (11)~~(9)~~ "Secretary" means the Secretary of Elderly Affairs.

44 (12)~~(10)~~ "State council" means the State Long-Term Care
45 Ombudsman Council created by s. 400.0067.

46 (13) "State ombudsman" means the State Long-Term Care
47 Ombudsman, who is the individual appointed by the Secretary of
48 Elderly Affairs to head the State Long-Term Care Ombudsman
49 Program.

50 (14) "State ombudsman program" means the State Long-Term
51 Care Ombudsman Program operating under the direction of the
52 State Long Term Care Ombudsman.

53 Section 2. Section 400.0061, Florida Statutes, is amended
54 to read:

55 400.0061 Legislative findings and intent; long-term care
56 facilities.—

57 (1) The Legislature finds that conditions in long-term care
58 facilities in this state are such that the rights, health,
59 safety, and welfare of residents are not fully ensured by rules
60 of the Department of Elderly Affairs or the Agency for Health
61 Care Administration or by the good faith of owners or operators
62 of long-term care facilities. Furthermore, there is a need for a
63 formal mechanism whereby a long-term care facility resident, a
64 representative of a long-term care facility resident, or any
65 other concerned citizen may make a complaint against the
66 facility or its employees, or against other persons who are in a
67 position to restrict, interfere with, or threaten the rights,
68 health, safety, or welfare of a long-term care facility



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69 resident. The Legislature finds that concerned citizens are
70 often more effective advocates for the rights of others than
71 governmental agencies. The Legislature further finds that in
72 order to be eligible to receive an allotment of funds authorized
73 and appropriated under the federal Older Americans Act, the
74 state must establish and operate an Office of State Long-Term
75 Care Ombudsman, to be headed by the State Long-Term Care
76 Ombudsman, and carry out a long-term care ombudsman program.

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



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98 of residents.

99 Section 3. Section 400.0063, Florida Statutes, is amended
100 to read:

101 400.0063 Establishment of the ~~Office of~~ State Long-Term
102 Care Ombudsman Program; designation of ombudsman and legal
103 advocate.—

104 (1) There is created the ~~an Office of~~ State Long-Term Care
105 Ombudsman Program in the Department of Elderly Affairs.

106 (2) (a) The ~~Office of~~ State Long-Term Care Ombudsman Program
107 shall be headed by the State Long-Term Care Ombudsman, who shall
108 serve on a full-time basis and shall personally, or through
109 representatives of the state ombudsman program office, carry out
110 its ~~the~~ purposes and functions ~~of the office~~ in accordance with
111 state and federal law.

112 (b) The state ombudsman shall be appointed by and shall
113 serve at the pleasure of the Secretary of Elderly Affairs. The
114 secretary shall appoint a person who has expertise and
115 experience in the fields of long-term care and advocacy to serve
116 as state ombudsman.

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

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

123 1. Assisting the state ombudsman in carrying out the duties
124 of the office with respect to the abuse, neglect, exploitation
125 or violation of rights of residents of long-term care
126 facilities.



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127 2. Assisting the representatives of the State Long-Term
128 Care Ombudsman Program ~~state and local councils~~ in carrying out
129 their responsibilities under this part.

130 3. Pursuing administrative, legal, and other appropriate
131 remedies on behalf of residents.

132 4. Serving as legal counsel to the representatives of the
133 State Long-Term Care Ombudsman Program in ~~state and local~~
134 ~~councils, or individual members thereof, against whom~~ any suit
135 or other legal action that is initiated in connection with the
136 performance of the official duties of the representatives of the
137 State Long-Term Care Ombudsman Program ~~councils or an individual~~
138 ~~member.~~

139 Section 4. Section 400.0065, Florida Statutes, is amended
140 to read:

141 400.0065 State Long-Term Care Ombudsman Program; duties and
142 responsibilities.—

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

145 (a) Identify, investigate, and resolve complaints made by
146 or on behalf of residents of long-term care facilities relating
147 to actions or omissions by providers or representatives of
148 providers of long-term care services, other public or private
149 agencies, guardians, or representative payees that may adversely
150 affect the health, safety, welfare, or rights of the residents.

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

153 (c) Inform residents, their representatives, and other
154 citizens about obtaining the services of the State Long-Term
155 Care Ombudsman Program and its representatives.



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156 (d) Ensure that residents have regular and timely access to
157 the services provided through the State Long-Term Care Program
158 ~~office~~ and that residents and complainants receive timely
159 responses from representatives of the State Long-Term Care
160 Program office to their complaints.

161 (e) Represent the interests of residents before
162 governmental agencies and seek administrative, legal, and other
163 remedies to protect the health, safety, welfare, and rights of
164 the residents.

165 (f) Administer the state and local councils.

166 (g) Analyze, comment on, and monitor the development and
167 implementation of federal, state, and local laws, rules, and
168 regulations, and other governmental policies and actions, that
169 pertain to the health, safety, welfare, and rights of the
170 residents, with respect to the adequacy of long-term care
171 facilities and services in the state, and recommend any changes
172 in such laws, rules, regulations, policies, and actions as the
173 office determines to be appropriate and necessary.

174 (h) Provide technical support for the development of
175 resident and family councils to protect the well-being and
176 rights of residents.

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

179 (a) Establish and coordinate districts and local councils
180 throughout the state.

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

183 (c) Within the limits of appropriated federal and state
184 funding, employ such personnel ~~as are~~ necessary to perform



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185 adequately the functions of the office and provide or contract
186 for legal services to assist the representatives of the State
187 Long-Term Care Ombudsman Program ~~state and local councils~~ in the
188 performance of their duties. Staff positions established for the
189 purpose of coordinating the activities of each local council and
190 assisting its members may be filled by the ombudsman after
191 approval by the secretary. Notwithstanding any other provision
192 of this part, upon certification by the ombudsman that the staff
193 member hired to fill any such position has completed the initial
194 training required under s. 400.0091, such person shall be
195 considered a representative of the State Long-Term Care
196 Ombudsman Program for purposes of this part.

197 (d) Contract for services necessary to carry out the
198 activities of the office.

199 (e) Apply for, receive, and accept grants, gifts, or other
200 payments, including, but not limited to, real property, personal
201 property, and services from a governmental entity or other
202 public or private entity or person, and make arrangements for
203 the use of such grants, gifts, or payments.

204 (f) Coordinate, to the greatest extent possible, state and
205 local ombudsman services with the protection and advocacy
206 systems for individuals with developmental disabilities and
207 mental illnesses and with legal assistance programs for the poor
208 through adoption of memoranda of understanding and other means.

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

212 (g)(h) Enter into a cooperative agreement with the Medicaid
213 Fraud Division as prescribed under s. 731(e)(2)(B) of the Older



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214 Americans Act.

215 (h) ~~(i)~~ Prepare an annual report describing the activities
216 carried out by the office, the state council, the districts and
217 the local councils in the year for which the report is prepared.
218 The state ombudsman shall submit the report to the secretary,
219 the United States Assistant Secretary for Aging, the Governor,
220 the President of the Senate, the Speaker of the House of
221 Representatives, the Secretary of Children and Families, and the
222 Secretary of the Agency for Health Care Administration at least
223 30 days before the convening of the regular session of the
224 Legislature. ~~The secretary shall in turn submit the report to~~
225 ~~the United States Assistant Secretary for Aging, the Governor,~~
226 ~~the President of the Senate, the Speaker of the House of~~
227 ~~Representatives, the Secretary of Children and Families, and the~~
228 ~~Secretary of Health Care Administration.~~ The report must ~~shall~~,
229 at a minimum:

230 1. Contain and analyze data collected concerning complaints
231 about and conditions in long-term care facilities and the
232 disposition of such complaints.

233 2. Evaluate the problems experienced by residents.

234 3. Analyze the successes of the State Long-Term Care
235 Ombudsman Program ~~ombudsman program~~ during the preceding year,
236 including an assessment of how successfully the program has
237 carried out its responsibilities under the Older Americans Act.

238 4. Provide recommendations for policy, regulatory, and
239 statutory changes designed to solve identified problems; resolve
240 residents' complaints; improve residents' lives and quality of
241 care; protect residents' rights, health, safety, and welfare;
242 and remove any barriers to the optimal operation of the State



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243 Long-Term Care Ombudsman Program.

244 5. Contain recommendations from the State Long-Term Care
245 Ombudsman Council regarding program functions and activities and
246 recommendations for policy, regulatory, and statutory changes
247 designed to protect residents' rights, health, safety, and
248 welfare.

249 6. Contain any relevant recommendations from the
250 representatives of the State Long-Term Care Ombudsman Program
251 ~~local councils~~ regarding program functions and activities.

252 Section 5. Section 400.0067, Florida Statutes, is amended
253 to read:

254 400.0067 State Long-Term Care Ombudsman Council; duties;
255 membership.—

256 (1) There is created within the ~~Office of~~ State Long-Term
257 Care Ombudsman Program, the State Long-Term Care Ombudsman
258 Council.

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

260 (a) Serve as an advisory body to assist the state ombudsman
261 in reaching a consensus among districts and local councils on
262 issues affecting residents and impacting the optimal operation
263 of the program.

264 (b) Serve as an appellate body in receiving from the
265 districts or local councils complaints not resolved at the
266 district or local level. Any individual member or members of the
267 state council may enter any long-term care facility involved in
268 an appeal, pursuant to the conditions specified in s.
269 400.0074(2).

270 (c) Assist the ombudsman to discover, investigate, and
271 determine the existence of abuse or neglect in any long-term



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272 care facility, and work with the adult protective services
273 program as required in ss. 415.101-415.113.

274 (d) Assist the ombudsman in eliciting, receiving,
275 responding to, and resolving complaints made by or on behalf of
276 residents.

277 (e) Elicit and coordinate state, district, local, and
278 voluntary organizational assistance for the purpose of improving
279 the care received by residents.

280 (f) Assist the state ombudsman in preparing the annual
281 report described in s. 400.0065.

282 (3) The State Long-Term Care Ombudsman Council consists
283 ~~shall be composed~~ of one active certified ombudsman from each
284 local council in a district member elected by each local council
285 plus three at-large members ~~appointed by the Governor~~.

286 (a) Each local council in a district must select ~~shall~~
287 ~~elect by majority vote~~ a representative of its choice to serve
288 ~~from among the council members to represent the interests of the~~
289 ~~local council~~ on the state council. ~~A local council chair may~~
290 ~~not serve as the representative of the local council on the~~
291 ~~state council~~.

292 (b)1. The state ombudsman ~~secretary, after consulting with~~
293 ~~the ombudsman~~, shall submit to the secretary ~~Governor~~ a list of
294 individuals ~~persons~~ recommended for appointment to the at-large
295 positions on the state council. The list may ~~shall~~ not include
296 the name of any individual ~~person~~ who is currently serving in a
297 district ~~on a local council~~.

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

300 ~~3. If the Governor does not appoint an at-large member to~~



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301 ~~fill a vacant position within 60 days after the list is~~
302 ~~submitted, the secretary, after consulting with the ombudsman,~~
303 ~~shall appoint an at-large member to fill that vacant position.~~

304 (4) (a) (e)1. All state council members shall serve 3-year
305 terms.

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

308 3. A local council may recommend replacement ~~removal~~ of its
309 selected ~~elected~~ representative from the state council ~~by a~~
310 ~~majority vote~~. If the council votes to replace ~~remove~~ its
311 representative, the local council chair shall immediately notify
312 the state ombudsman. ~~The secretary shall advise the Governor of~~
313 ~~the local council's vote upon receiving notice from the~~
314 ~~ombudsman.~~

315 4. The position of any member missing three state council
316 meetings within a 1-year period without cause may be declared
317 vacant by the state ombudsman. The findings of the state
318 ombudsman regarding cause shall be final and binding.

319 (b) 5. Any vacancy on the state council shall be filled in
320 the same manner as the original appointment.

321 (c) (d)1. The state council shall elect a chair to serve for
322 a term of 1 year. A chair may not serve more than two
323 consecutive terms.

324 2. The chair shall select a vice chair from among the
325 members. The vice chair shall preside over the state council in
326 the absence of the chair.

327 3. The chair may create additional executive positions as
328 necessary to carry out the duties of the state council. Any
329 person appointed to an executive position shall serve at the



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330 pleasure of the chair, and his or her term shall expire on the
331 same day as the term of the chair.

332 4. A chair may be immediately removed from office before
333 ~~prior to~~ the expiration of his or her term by a vote of two-
334 thirds of all state council members present at any meeting at
335 which a quorum is present. If a chair is removed from office
336 before ~~prior to~~ the expiration of his or her term, a replacement
337 chair shall be chosen during the same meeting in the same manner
338 as described in this paragraph, and the term of the replacement
339 chair shall begin immediately. The replacement chair shall serve
340 for the remainder of the term and is eligible to serve two
341 subsequent consecutive terms.

342 (d) ~~(e)~~ 1. The state council shall meet upon the call of the
343 chair or upon the call of the state ombudsman. The state council
344 shall meet at least quarterly but may meet more frequently as
345 needed.

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

349 3. The state council may not vote on or otherwise make any
350 decisions resulting in a recommendation that will directly
351 impact the state council, the district, or any local council,
352 outside of a publicly noticed meeting at which a quorum is
353 present.

354 (e) ~~(f)~~ Members may not ~~shall~~ receive ~~no~~ compensation for
355 attendance at state council meetings but shall, with approval
356 from the state ombudsman, be reimbursed for per diem and travel
357 expenses as provided in s. 112.061.

358 Section 6. Section 400.0069, Florida Statutes, is amended



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359 to read:

360 400.0069 Long-term care ombudsman districts; local long-
361 term care ombudsman councils; duties; appointment membership.~~.-~~

362 (1) (a) The state ombudsman shall designate districts and
363 each district shall designate local long-term care ombudsman
364 councils to carry out the duties of the State Long-Term Care
365 Ombudsman Program within local communities. Each district local
366 ~~council~~ shall function under the direction of the state
367 ombudsman.

368 (b) The state ombudsman shall ensure that there is at least
369 one employee of the department certified as a long-term care
370 ombudsman and a least one local council operating in each
371 ~~district of the department's planning and service areas.~~ The
372 state ombudsman may create additional local councils as
373 necessary to ensure that residents throughout the state have
374 adequate access to State Long-Term Care Ombudsman Program
375 services. ~~The ombudsman, after approval from the secretary,~~
376 ~~shall designate the jurisdictional boundaries of each local~~
377 ~~council.~~

378 (c) Each district shall convene a public meeting every
379 quarter or as needed.

380 (2) The duties of the representatives of the State Long-
381 Term Care Ombudsman Program local councils are to:

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

385 (b) Discover, investigate, and determine the existence of
386 abuse, ~~or~~ neglect, or exploitation in any long-term care
387 facility and to use the procedures provided for in ss. 415.101-



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388 415.113 when applicable.

389 (c) Identify ~~Elicit, receive,~~ investigate, ~~respond to,~~ and
390 resolve complaints made by or on behalf of residents relating to
391 actions or omissions by providers of long-term care services,
392 other public agencies, guardians, or representative payees which
393 may adversely affect the health, safety, welfare, or rights of
394 residents.

395 (d) Review and, if necessary, comment on all existing or
396 proposed rules, regulations, and other governmental policies and
397 actions relating to long-term care facilities that may
398 potentially have an effect on the ~~rights,~~ health, safety,
399 welfare, and rights welfare of residents.

400 (e) Review personal property and money accounts of
401 residents who are receiving assistance under the Medicaid
402 program pursuant to an investigation to obtain information
403 regarding a specific complaint ~~or problem.~~

404 (f) Recommend that the state ombudsman and the legal
405 advocate seek administrative, legal, and other remedies to
406 protect the health, safety, welfare, and rights of ~~the~~
407 residents.

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

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

412 (3) In order to carry out the duties specified in
413 subsection (2), a representative of the State Long-Term Care
414 Ombudsman Program or a member of a local council is authorized
415 to enter any long-term care facility without notice or first
416 obtaining a warrant; however, subject to the provisions of s.



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417 400.0074(2) may apply regarding notice of a followup
418 administrative assessment.

419 (4) Each district and local council shall be composed of
420 ombudsmen ~~members~~ whose primary residences are ~~residence is~~
421 located within the boundaries of the district ~~local council's~~
422 jurisdiction.

423 (a) Upon good cause shown and with the consent of the
424 ombudsman, the state ombudsman may appoint an ombudsman to
425 another district. The ombudsman shall strive to ensure that each
426 local council include the following persons as members:

427 1. At least one medical or osteopathic physician whose
428 practice includes or has included a substantial number of
429 geriatric patients and who may practice in a long-term care
430 facility;

431 2. At least one registered nurse who has geriatric
432 experience;

433 3. At least one licensed pharmacist;

434 4. At least one registered dietitian;

435 5. At least six nursing home residents or representative
436 consumer advocates for nursing home residents;

437 6. At least three residents of assisted living facilities
438 or adult family-care homes or three representative consumer
439 advocates for alternative long-term care facility residents;

440 7. At least one attorney; and

441 8. At least one professional social worker.

442 (b) The following individuals may not be appointed as
443 ombudsmen:

444 1. The owner or representative of a long-term care
445 facility.



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446 2. A provider or representative of a provider of long-term
447 care service.

448 3. An employee of the agency.

449 4. An employee of the department, except for staff
450 certified as ombudsmen in the district offices.

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

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

453 ~~(b) In no case shall the medical director of a long-term~~
454 ~~care facility or an employee of the agency, the department, the~~
455 ~~Department of Children and Families, or the Agency for Persons~~
456 ~~with Disabilities serve as a member or as an ex officio member~~
457 ~~of a council.~~

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

459 ~~1. Individuals wishing to join a local council shall Submit~~
460 ~~an application to the state ombudsman or his or her designee.~~
461 ~~The ombudsman shall review the individual's application and~~
462 ~~advise the secretary of his or her recommendation for approval~~
463 ~~or disapproval of the candidate's membership on the local~~
464 ~~council. If the secretary approves of the individual's~~
465 ~~membership, the individual shall be appointed as a member of the~~
466 ~~local council.~~

467 2. Successfully complete a level 2 background screening
468 pursuant to s. 430.0402 and chapter 435.

469 (b) The state ombudsman shall approve or deny the
470 appointment of the individual as an ombudsman ~~secretary may~~
471 ~~rescind the ombudsman's approval of a member on a local council~~
472 ~~at any time. If the state ombudsman ~~secretary~~ rescinds the~~
473 ~~approval of a member on a local council, the state ombudsman~~
474 ~~shall ensure that the individual is immediately removed from the~~



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475 local council on which he or she serves and the individual may
476 no longer represent the State Long-Term Care Ombudsman Program
477 until the state ombudsman ~~secretary~~ provides his or her
478 approval.

479 (c) Upon appointment as an ombudsman, the individual may
480 participate in district activities but may not represent the
481 program or conduct any authorized program duties until the
482 individual has completed the initial training specified in s.
483 400.0091(1) and has been certified by the state ombudsman.

484 (d) The state ombudsman may rescind the appointment of an
485 individual as an ombudsman for good cause shown, such as
486 development of a conflict of interest, failure to adhere to the
487 policies and procedures established by the State Long Term Care
488 Program, or demonstrative inability to carry out the
489 responsibilities of the State Long Term Care Program. After the
490 appointment is rescinded, the individual may not conduct any
491 duties as an ombudsman and may not represent the State Long-Term
492 Care Ombudsman Program.

493 (e) ~~(e)~~ A local council may recommend the removal of one or
494 more of its members by submitting to the state ombudsman a
495 resolution adopted by a two-thirds vote of the members of the
496 council stating the name of the member or members recommended
497 for removal and the reasons for the recommendation. If such a
498 recommendation is adopted by a local council, the local council
499 chair or district manager ~~coordinator~~ shall immediately report
500 the council's recommendation to the state ombudsman. The state
501 ombudsman shall review the recommendation of the local council
502 and advise the district manager and local council chair
503 ~~secretary~~ of his or her decision ~~recommendation~~ regarding



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504 removal of the council member or members.

505 (6) (a) Each local council shall elect a chair for a term of
506 1 year. There shall be no limitation on the number of terms that
507 an approved member of a local council may serve as chair.

508 (b) The chair shall select a vice chair from among the
509 members of the council. The vice chair shall preside over the
510 council in the absence of the chair.

511 (c) The chair may create additional executive positions as
512 necessary to carry out the duties of the local council. Any
513 person appointed to an executive position shall serve at the
514 pleasure of the chair, and his or her term shall expire on the
515 same day as the term of the chair.

516 (d) A chair may be immediately removed from office prior to
517 the expiration of his or her term by a vote of two-thirds of the
518 members of the local council. If any chair is removed from
519 office before ~~prior to~~ the expiration of his or her term, a
520 replacement chair shall be elected during the same meeting, and
521 the term of the replacement chair shall begin immediately. The
522 replacement chair shall serve for the remainder of the term of
523 the person he or she replaced.

524 (7) Each local council shall meet upon the call of its
525 chair or upon the call of the ombudsman. Each local council
526 shall meet at least once a month but may meet more frequently if
527 necessary.

528 (8) An ombudsman may not ~~A member of a local council shall~~
529 receive ~~no~~ compensation but shall, with approval from the state
530 ombudsman, be reimbursed for travel expenses ~~both within and~~
531 ~~outside the jurisdiction of the local council~~ in accordance with
532 the provisions of s. 112.061.



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533 (9) A representative of the State Long-Term Care Ombudsman
534 Program may ~~The local councils are authorized to~~ call upon
535 appropriate state agencies ~~of state government~~ for such
536 professional assistance as ~~may be~~ needed in the discharge of his
537 or her ~~their~~ duties, and such. ~~All~~ state agencies shall
538 cooperate ~~with the local councils~~ in providing requested
539 information and agency representation ~~at council meetings.~~

540 Section 7. Section 400.0070, Florida Statutes, is amended
541 to read:

542 400.0070 Conflicts of interest.—

543 (1) A representative of the State Long-Term Care Ombudsman
544 Program may ~~The ombudsman shall~~ not:

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

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

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

555 (2) Each representative of the State Long-Term Care
556 Ombudsman Program ~~employee of the office, each state council~~
557 ~~member, and each local council member~~ shall certify that he or
558 she does not have a ~~has no~~ conflict of interest.

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

561 (a) Situations that constitute a ~~person having a~~ conflict



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562 of interest which ~~that~~ could materially affect the objectivity
563 or capacity of an individual ~~a person~~ to serve as a
564 representative of the State Long-Term Care Ombudsman Program
565 while carrying out the purposes of the State Long-Term Care
566 Program as specified in this part ~~on an ombudsman council, or as~~
567 ~~an employee of the office, while carrying out the purposes of~~
568 ~~the State Long-Term Care Ombudsman Program as specified in this~~
569 ~~part.~~

570 (b) The procedure by which an individual ~~a person~~ listed in
571 subsection (2) must ~~shall~~ certify that he or she does not have a
572 ~~has no~~ conflict of interest.

573 Section 8. Section 400.0071, Florida Statutes, is amended
574 to read:

575 400.0071 State Long-Term Care Ombudsman Program complaint
576 procedures.—The department, in consultation with the state
577 ombudsman, shall adopt rules implementing state and local
578 complaint procedures. The rules must include procedures for
579 receiving, investigating, identifying, and resolving complaints
580 concerning the health, safety, welfare, and rights of
581 residents.÷

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

584 ~~(2) Conducting investigations of a long-term care facility~~
585 ~~or an employee of a long-term care facility subsequent to~~
586 ~~receiving a complaint.~~

587 ~~(3) Conducting onsite administrative assessments of long-~~
588 ~~term care facilities.~~

589 Section 9. Section 400.0073, Florida Statutes, is amended
590 to read:



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591 400.0073 State and local ombudsman council investigations.-

592 (1) A representative of the State Long-Term Care Ombudsman
593 Program local council shall identify and investigate, within a
594 reasonable time after a complaint is made, by or on behalf any
595 complaint of a resident relating to actions or omissions by
596 providers or representatives of providers of long-term care
597 services, other public agencies, guardians, or representative
598 payees which may adversely affect the health, safety, welfare,
599 or rights of residents., ~~a representative of a resident, or any~~
600 ~~other credible source based on an action or omission by an~~
601 ~~administrator, an employee, or a representative of a long-term~~
602 ~~care facility which might be:~~

- 603 (a) ~~Contrary to law;~~
604 (b) ~~Unreasonable, unfair, oppressive, or unnecessarily~~
605 ~~discriminatory, even though in accordance with law;~~
606 (c) ~~Based on a mistake of fact;~~
607 (d) ~~Based on improper or irrelevant grounds;~~
608 (e) ~~Unaccompanied by an adequate statement of reasons;~~
609 (f) ~~Performed in an inefficient manner; or~~
610 (g) ~~Otherwise adversely affecting the health, safety,~~
611 ~~welfare, or rights of a resident.~~

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

614 (2)~~(3)~~ Subsequent to an appeal from a local council, the
615 state council may investigate any complaint received by the
616 local council involving a long-term care facility or a resident.

617 (3)~~(4)~~ If a representative of the State Long-Term Care
618 Ombudsman Program ~~the ombudsman or any state or local council~~
619 ~~member~~ is not allowed to enter a long-term care facility, the



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620 administrator of the facility shall be considered to have
621 interfered with a representative of the State Long-Term Care
622 Ombudsman Program office, ~~the state council, or the local~~
623 ~~council~~ in the performance of official duties as described in s.
624 400.0083(1) and to have violated ~~committed a violation of~~ this
625 part. The representative of the State Long-Term Care Ombudsman
626 Program ombudsman shall report a facility's refusal to allow
627 entry to the state ombudsman or his or her designee, who shall
628 report the incident to the agency, and the agency shall record
629 the report and take it into consideration when determining
630 actions allowable under s. 400.102, s. 400.121, s. 429.14, s.
631 429.19, s. 429.69, or s. 429.71.

632 Section 10. Section 400.0074, Florida Statutes, is amended
633 to read:

634 400.0074 Local ombudsman council onsite administrative
635 assessments.—

636 (1) A representative of the State Long-Term Care Ombudsman
637 Program shall ~~In addition to any specific investigation~~
638 ~~conducted pursuant to a complaint, the local council shall~~
639 conduct, at least annually, an onsite administrative assessment
640 of each nursing home, assisted living facility, and adult
641 family-care home ~~within its jurisdiction~~. This administrative
642 assessment must be resident-centered and must ~~shall~~ focus on
643 factors affecting the rights, health, safety, and welfare of the
644 residents. Each local council is encouraged to conduct a similar
645 onsite administrative assessment of each additional long-term
646 care facility within its jurisdiction.

647 (2) An onsite administrative assessment conducted by a
648 local council shall be subject to the following conditions:



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649 (a) To the extent possible and reasonable, the
650 administrative assessment may ~~assessments shall~~ not duplicate
651 the efforts of ~~the agency~~ surveys and inspections of long-term
652 care facilities conducted by state agencies ~~under part II of~~
653 ~~this chapter and parts I and II of chapter 429.~~

654 (b) An administrative assessment shall be conducted at a
655 time and for a duration necessary to produce the information
656 required to complete the assessment ~~carry out the duties of the~~
657 ~~local council.~~

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

661 (d) A representative of the State Long-Term Care Ombudsman
662 Program ~~local council member~~ physically present for the
663 administrative assessment must ~~shall~~ identify himself or herself
664 to the administrator ~~and cite the specific statutory authority~~
665 ~~for his or her assessment~~ of the facility or his or her
666 designee.

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

669 (f) A representative of the State Long-Term Care Ombudsman
670 Program ~~local council member~~ may not enter a single-family
671 residential unit within a long-term care facility during an
672 administrative assessment without the permission of the resident
673 or the representative of the resident.

674 (g) An administrative assessment must be conducted in a
675 manner that does not impose an ~~will impose no~~ unreasonable
676 burden on a long-term care facility.

677 (3) Regardless of jurisdiction, the state ombudsman may



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678 authorize a state or local council member to assist another
679 local council to perform the administrative assessments
680 described in this section.

681 (4) An onsite administrative assessment may not be
682 accomplished by forcible entry. However, if a representative of
683 the State Long-Term Care Ombudsman Program ~~the ombudsman or a~~
684 ~~state or local council member~~ is not allowed to enter a long-
685 term care facility, the administrator of the facility shall be
686 considered to have interfered with a representative of the State
687 Long-Term Care Ombudsman Program ~~office, the state council, or~~
688 ~~the local council~~ in the performance of official duties as
689 described in s. 400.0083(1) and to have committed a violation of
690 this part. The representative of the State Long-Term Care
691 Ombudsman Program ~~ombudsman~~ shall report the refusal by a
692 facility to allow entry to the state ombudsman or his or her
693 designee, who shall report the incident to the agency, and the
694 agency shall record the report and take it into consideration
695 when determining actions allowable under s. 400.102, s. 400.121,
696 s. 429.14, s. 429.19, s. 429.69, or s. 429.71.

697 (5) The department, in consultation with the state
698 ombudsman, may adopt rules implementing procedures for
699 conducting onsite administrative assessments of long-term care
700 facilities.

701 Section 11. Section 400.0075, Florida Statutes, is amended
702 to read:

703 400.0075 Complaint notification and resolution procedures.—

704 (1) (a) Any complaint ~~or problem~~ verified by a
705 representative of the State Long-Term Care Ombudsman Program ~~an~~
706 ~~ombudsman council~~ as a result of an investigation which is



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707 determined by the local council to require remedial action may
708 ~~or onsite administrative assessment, which complaint or problem~~
709 ~~is determined to require remedial action by the local council,~~
710 ~~shall~~ be identified and brought to the attention of the long-
711 term care facility administrator subject to the confidentiality
712 provisions of s. 400.0077 ~~in writing~~. Upon receipt of the
713 information ~~such document~~, the administrator, with the
714 concurrence of the representative of the State Long-Term Care
715 Ombudsman Program ~~local council chair~~, shall establish target
716 dates for taking appropriate remedial action. If, by the target
717 date, the remedial action is not completed or forthcoming, the
718 representative of the State Long-Term Care Ombudsman Program may
719 extend the target date if there is reason to believe such action
720 would facilitate the resolution of the complaint, or the
721 representative of the State Long-Term Care Ombudsman Program may
722 refer the complaint to the district manager who may refer the
723 complaint to the state council. ~~local council chair may, after~~
724 ~~obtaining approval from the ombudsman and a majority of the~~
725 ~~members of the local council:~~

726 ~~1. Extend the target date if the chair has reason to~~
727 ~~believe such action would facilitate the resolution of the~~
728 ~~complaint.~~

729 ~~2. In accordance with s. 400.0077, publicize the complaint,~~
730 ~~the recommendations of the council, and the response of the~~
731 ~~long term care facility.~~

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

733 (b) If the representative of the State Long-Term Care
734 Ombudsman Program determines ~~local council chair believes~~ that
735 the health, safety, welfare, or rights of a ~~the~~ resident are in



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736 imminent danger, the representative of the State Long-Term Care
737 Ombudsman Program must immediately ~~the chair shall~~ notify the
738 district manager and local council chair. ~~ombudsman or legal~~
739 ~~advocate, who,~~ The district manager or local council chair,
740 after verifying that such imminent danger exists, must notify
741 the appropriate state agencies, including law enforcement
742 agencies, the state ombudsman, and the legal advocate to ensure
743 the protection of ~~shall seek immediate legal or administrative~~
744 ~~remedies to protect~~ the resident.

745 (c) If the state ombudsman or legal advocate has reason to
746 believe that the long-term care facility or an employee of the
747 facility has committed a criminal act, the state ombudsman or
748 legal advocate shall provide the local law enforcement agency
749 with the relevant information to initiate an investigation of
750 the case.

751 (2) ~~(a)~~ Upon referral from a district or local council, the
752 state ombudsman or his or her designee ~~council~~ shall assume the
753 responsibility for the disposition of the complaint. If a long-
754 term care facility fails to take action to resolve or remedy the
755 ~~on a complaint by the state council,~~ the state ombudsman ~~council~~
756 may, ~~after obtaining approval from the ombudsman and a majority~~
757 ~~of the state council members:~~

758 (a)1. In accordance with s. 400.0077, publicize the
759 complaint, the recommendations of the local or state council,
760 and the response of the long-term care facility.

761 (b)2. Recommend to the department and the agency a series
762 of facility reviews pursuant to s. 400.19, s. 429.34, or s.
763 429.67 to ensure correction and nonrecurrence of the conditions
764 that gave ~~give~~ rise to the complaint ~~complaints~~ against the a



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765 long-term care facility.

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

769 ~~(d)4.~~ Recommend to the department and the agency that
770 procedures be initiated for action against ~~revocation of~~ the
771 long-term care facility's license in accordance with chapter
772 120.

773 ~~(b) If the state council chair believes that the health,~~
774 ~~safety, welfare, or rights of the resident are in imminent~~
775 ~~danger, the chair shall notify the ombudsman or legal advocate,~~
776 ~~who, after verifying that such imminent danger exists, shall~~
777 ~~seek immediate legal or administrative remedies to protect the~~
778 ~~resident.~~

779 ~~(3)(e)~~ If the state ombudsman, after consultation with the
780 legal advocate, has reason to believe that the long-term care
781 facility or an employee of the facility has committed a criminal
782 act, the state ombudsman shall provide the local law enforcement
783 agency with the relevant information to initiate an
784 investigation of the case.

785 Section 12. Section 400.0078, Florida Statutes, is amended
786 to read:

787 400.0078 Citizen access to State Long-Term Care Ombudsman
788 Program services.—

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

793 ~~(2) Every resident or representative of a resident shall~~



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794 ~~receive,~~ Upon admission to a long-term care facility, each
795 resident or representative of a resident must receive
796 information regarding:

797 (a) The purpose of the State Long-Term Care Ombudsman
798 Program;

799 (b) The statewide toll-free telephone number and e-mail
800 address for receiving complaints; ~~and~~

801 (c) Information that retaliatory action cannot be taken
802 against a resident for presenting grievances or for exercising
803 any other resident rights.

804 (d) Other relevant information regarding how to contact
805 representatives of the State Long Term Care Ombudsman Program
806 ~~the program.~~

807
808 Residents or their representatives must be furnished
809 additional copies of this information upon request.

810 Section 13. Section 400.0079, Florida Statutes, is amended
811 to read:

812 400.0079 Immunity.—

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

817 (2) Representatives of the State Long-Term Care Ombudsman
818 Program are ~~The ombudsman or any person authorized by the~~
819 ~~ombudsman to act on behalf of the office, as well as all members~~
820 ~~of the state and local councils,~~ shall be immune from any
821 liability, civil or criminal, that otherwise might be incurred
822 or imposed during the good faith performance of official duties.



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823 Section 14. Section 400.0081, Florida Statutes, is amended
824 to read:

825 400.0081 Access to facilities, residents, and records.—

826 (1) A long-term care facility shall provide representatives
827 of the State Long-Term Care Program with ~~the office, the state~~
828 ~~council and its members, and the local councils and their~~
829 ~~members~~ access to:

830 (a) ~~Any portion of~~ The long-term care facility and its
831 residents ~~any resident as necessary to investigate or resolve a~~
832 ~~complaint.~~

833 (b) Where appropriate, medical and social records of a
834 resident for review ~~as necessary to investigate or resolve a~~
835 ~~complaint,~~ if:

836 1. The representative of the State Long-Term Care Ombudsman
837 Program office has the permission of the resident or the legal
838 representative of the resident; or

839 2. The resident is unable to consent to the review and does
840 not have a ~~has no~~ legal representative.

841 (c) Medical and social records of a ~~the~~ resident as
842 necessary to investigate ~~or resolve~~ a complaint, if:

843 1. A legal representative or guardian of the resident
844 refuses to give permission;

845 2. The representative of the State Long-Term Care Ombudsman
846 Program office has reasonable cause to believe that the legal
847 representative or guardian is not acting in the best interests
848 of the resident; and

849 3. The representative of the State Long-Term Care Ombudsman
850 Program ~~state or local council member~~ obtains the approval of
851 the state ombudsman.



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852 (d) Access to ~~The~~ administrative records, policies, and
853 documents to which residents or the general public have access.

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

857 (2) The department, in consultation with the state
858 ~~ombudsman and the state council~~, may adopt rules to establish
859 procedures to ensure access to facilities, residents, and
860 records as described in this section.

861 Section 15. Section 400.0083, Florida Statutes, is amended
862 to read:

863 400.0083 Interference; retaliation; penalties.—

864 (1) A ~~It shall be unlawful for any person, long-term care~~
865 ~~facility, or other entity~~ may not ~~to~~ willfully interfere with a
866 representative of the State Long-Term Care Ombudsman Program
867 ~~office, the state council, or a local council~~ in the performance
868 of official duties.

869 (2) A ~~It shall be unlawful for any person, long-term care~~
870 ~~facility, or other entity~~ may not ~~to~~ knowingly or willfully take
871 action or retaliate against any resident, employee, or other
872 person for filing a complaint with, providing information to, or
873 otherwise cooperating with any representative of the State Long
874 Term-Care Ombudsman Program ~~office, the state council, or a~~
875 ~~local council~~.

876 (3) A ~~Any~~ person, long-term care facility, or other entity
877 that violates this section:

878 (a) Is ~~Shall be~~ liable for damages and equitable relief as
879 determined by law.

880 (b) Commits a misdemeanor of the second degree, punishable



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881 as provided in s. 775.083.

882 Section 16. Section 400.0087, Florida Statutes, is amended
883 to read:

884 400.0087 Department oversight; funding.—

885 (1) The department shall meet the costs associated with the
886 State Long-Term Care Ombudsman Program from funds appropriated
887 to it.

888 (a) The department shall include the costs associated with
889 support of the State Long-Term Care Ombudsman Program when
890 developing its budget requests for consideration by the Governor
891 and submittal to the Legislature.

892 (b) The department may divert from the federal ombudsman
893 appropriation an amount equal to the department's administrative
894 cost ratio to cover the costs associated with administering the
895 State Long-Term Care Ombudsman Program. The remaining allotment
896 from the Older Americans Act program shall be expended on direct
897 ombudsman activities.

898 (2) The department shall monitor the State Long-Term Care
899 Ombudsman Program ~~office~~, the state council, and the local
900 councils to ensure that each is carrying out the duties
901 delegated to it by state and federal law.

902 (3) The department is responsible for ensuring that the
903 State Long-Term Care Ombudsman Program ~~office~~:

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

906 (b) Provides information to public and private agencies,
907 legislators, and others.

908 (c) Provides appropriate training to representatives of the
909 State Long-Term Care Ombudsman Office ~~or of the state or local~~



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910 ~~councils.~~

911 (d) Coordinates ombudsman services with Disability Rights
912 Florida, the Advocacy Center for Persons with Disabilities and
913 with providers of legal services to residents of long-term care
914 facilities in compliance with state and federal laws.

915 (4) The department shall also:

916 (a) Receive and disburse state and federal funds for
917 purposes that the state ombudsman has formulated in accordance
918 with the Older Americans Act.

919 (b) Whenever necessary, act as liaison between agencies and
920 branches of the federal and state governments and the State
921 Long-Term Care Ombudsman Program.

922 Section 17. Section 400.0089, Florida Statutes, is amended
923 to read:

924 400.0089 Complaint data reports.—The State Long-Term Care
925 Ombudsman Program ~~office~~ shall maintain a statewide uniform
926 reporting system to collect and analyze data relating to
927 complaints and conditions in long-term care facilities and to
928 residents for the purpose of identifying and resolving
929 complaints ~~significant problems. The office shall publish~~
930 ~~quarterly and make readily available~~ Information pertaining to
931 the number and types of complaints received by the State Long-
932 Term Care Ombudsman Program shall be published quarterly and
933 made readily available and shall include such information in the
934 annual report required under s. 400.0065.

935 Section 18. Section 400.0091, Florida Statutes, is amended
936 to read:

937 400.0091 Training.—The state ombudsman shall ensure that
938 appropriate training is provided to all representatives of the



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939 State Long-Term Care Ombudsman Program ~~employees of the office~~
940 ~~and to the members of the state and local councils.~~

941 (1) All representatives of the State Long-Term Care
942 Ombudsman Program ~~state and local council members and employees~~
943 ~~of the office~~ shall be given a minimum of 20 hours of training
944 upon employment with the State Long-Term Care Ombudsman Program
945 ~~office~~ or appointment as an ombudsman. Ten approval as a state
946 ~~or local council member and 10 hours of training in the form of~~
947 continuing education is required annually thereafter.

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

951 (a) Resident confidentiality.
952 (b) Guardianships and powers of attorney.
953 (c) Medication administration.
954 (d) Care and medication of residents with dementia and
955 Alzheimer's disease.

956 (e) Accounting for residents' funds.
957 (f) Discharge rights and responsibilities.
958 (g) Cultural sensitivity.

959 (h) Any other topic related to residency in a long-term
960 care facility recommended by the secretary.

961 (3) An individual ~~No employee, officer, or representative~~
962 ~~of the office or of the state or local councils,~~ other than the
963 state ombudsman, may not hold himself or herself out as a
964 representative of the State Long-Term Care Ombudsman Program or
965 conduct any authorized program duty described in this part
966 unless the individual ~~person~~ has received the training required
967 by this section and has been certified by the state ombudsman as



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968 qualified to carry out ombudsman activities on behalf of the
969 office or the state or local councils.

970 Section 19. Subsection (4) of section 20.41, Florida
971 Statutes, is amended to read:

972 20.41 Department of Elderly Affairs.—There is created a
973 Department of Elderly Affairs.

974 (4) The department shall administer the State Long-Term
975 Care Ombudsman Program Council, created by s. 400.0063 ~~400.0067~~,
976 ~~and the local long-term care ombudsman councils, created by s.~~
977 ~~400.0069~~ and shall, as required by s. 712 of the federal Older
978 Americans Act of 1965, ensure that ~~both~~ the State Long Term Care
979 Ombudsman Program operates ~~state and local long-term care~~
980 ~~ombudsman councils operate~~ in compliance with the Older
981 Americans Act.

982 Section 20. Subsections (14) through (19) of section
983 400.021, Florida Statutes, are amended to read:

984 400.021 Definitions.—When used in this part, unless the
985 context otherwise requires, the term:

986 (14) "Office" has the same meaning as in s. 400.0060.

987 (15)~~(14)~~ "Planning and service area" means the geographic
988 area in which the Older Americans Act programs are administered
989 and services are delivered by the Department of Elderly Affairs.

990 (16) "Representative of the State Long Term Care Ombudsman
991 Program" has the same meaning as in s. 400.0060.

992 (17)~~(15)~~ "Respite care" means admission to a nursing home
993 for the purpose of providing a short period of rest or relief or
994 emergency alternative care for the primary caregiver of an
995 individual receiving care at home who, without home-based care,
996 would otherwise require institutional care.



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997 (18)~~(16)~~ "Resident care plan" means a written plan
998 developed, maintained, and reviewed not less than quarterly by a
999 registered nurse, with participation from other facility staff
1000 and the resident or his or her designee or legal representative,
1001 which includes a comprehensive assessment of the needs of an
1002 individual resident; the type and frequency of services required
1003 to provide the necessary care for the resident to attain or
1004 maintain the highest practicable physical, mental, and
1005 psychosocial well-being; a listing of services provided within
1006 or outside the facility to meet those needs; and an explanation
1007 of service goals.

1008 (19)~~(17)~~ "Resident designee" means a person, other than the
1009 owner, administrator, or employee of the facility, designated in
1010 writing by a resident or a resident's guardian, if the resident
1011 is adjudicated incompetent, to be the resident's representative
1012 for a specific, limited purpose.

1013 (20)~~(18)~~ "State Long Term Care Ombudsman Program ombudsman
1014 council" has the same meaning as in s. 400.0060 ~~means the State~~
1015 ~~Long Term Care Ombudsman Council established pursuant to s.~~
1016 ~~400.0067.~~

1017 (21)~~(19)~~ "Therapeutic spa services" means bathing, nail,
1018 and hair care services and other similar services related to
1019 personal hygiene.

1020 Section 21. Paragraph (c) of subsection (1) and subsections
1021 (2), and (3) of section 400.022, Florida Statutes, are amended
1022 to 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



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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, the Department of Health, the Agency
1039 for Health Care Administration, the Office of the Attorney
1040 General, and the Department of Elderly Affairs; any law
1041 enforcement officer; any representative of the State Long Term
1042 Care Ombudsman Program ~~members of the state or local ombudsman~~
1043 ~~council~~; and the resident's individual physician.

1044 2. Subject to the resident's right to deny or withdraw
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 ~~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



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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 or local ombudsman council. The statement must be in
1062 boldfaced type and ~~shall~~ include the ~~name, address, and~~
1063 telephone number and e-mail address of the State Long Term Care
1064 Ombudsman Program, the numbers of the local ombudsman council
1065 and the Elder Abuse Hotline operated by the Department of
1066 Children and Families ~~central abuse hotline where complaints may~~
1067 ~~be lodged.~~

1068 (3) Any violation of the resident's rights set forth in
1069 this section constitutes ~~shall constitute~~ grounds for action by
1070 the agency under ~~the provisions of~~ s. 400.102, s. 400.121, or
1071 part II of chapter 408. In order to determine whether the
1072 licensee is adequately protecting residents' rights, the
1073 licensure inspection of the facility must ~~shall~~ include private
1074 informal conversations with a sample of residents to discuss
1075 residents' experiences within the facility with respect to
1076 rights specified in this section and general compliance with
1077 standards, and consultation with the State Long-Term Care
1078 Ombudsman Program ~~ombudsman council in the local planning and~~
1079 ~~service area of the Department of Elderly Affairs in which the~~
1080 ~~nursing home is located.~~

1081 Section 22. Subsections (8), (9), and (11) through (14) of
1082 section 400.0255, Florida Statutes, are amended to read:

1083 400.0255 Resident transfer or discharge; requirements and



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1084 procedures; hearings.-

1085 (8) The notice required by subsection (7) must be in
1086 writing and must contain all information required by state and
1087 federal law, rules, or regulations applicable to Medicaid or
1088 Medicare cases. The agency shall develop a standard document to
1089 be used by all facilities licensed under this part for purposes
1090 of notifying residents of a discharge or transfer. Such document
1091 must include a means for a resident to request the local long-
1092 term care ombudsman council to review the notice and request
1093 information about or assistance with initiating a fair hearing
1094 with the department's Office of Appeals Hearings. In addition to
1095 any other pertinent information included, the form shall specify
1096 the reason allowed under federal or state law that the resident
1097 is being discharged or transferred, with an explanation to
1098 support this action. Further, the form must ~~shall~~ state the
1099 effective date of the discharge or transfer and the location to
1100 which the resident is being discharged or transferred. The form
1101 must ~~shall~~ clearly describe the resident's appeal rights and the
1102 procedures for filing an appeal, including the right to request
1103 the local ombudsman council ~~to~~ review the notice of discharge or
1104 transfer. A copy of the notice must be placed in the resident's
1105 clinical record, and a copy must be transmitted to the
1106 resident's legal guardian or representative and to the local
1107 ombudsman council within 5 business days after signature by the
1108 resident or resident designee.

1109 (9) A resident may request that the State Long-Term Care
1110 Ombudsman Program or local ombudsman council review any notice
1111 of discharge or transfer given to the resident. When requested
1112 by a resident to review a notice of discharge or transfer, the



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1113 local ombudsman council shall do so within 7 days after receipt
1114 of the request. The nursing home administrator, or the
1115 administrator's designee, must forward the request for review
1116 contained in the notice to the State Long-Term Care Ombudsman
1117 Program or local ombudsman council within 24 hours after such
1118 request is submitted. Failure to forward the request within 24
1119 hours after the request is submitted shall toll the running of
1120 the 30-day advance notice period until the request has been
1121 forwarded.

1122 (11) Notwithstanding paragraph (10) (b), an emergency
1123 discharge or transfer may be implemented as necessary pursuant
1124 to state or federal law during the ~~period of~~ time after the
1125 notice is given and before the time a hearing decision is
1126 rendered. Notice of an emergency discharge or transfer to the
1127 resident, the resident's legal guardian or representative, and
1128 the State Long-Term Care Ombudsman Program or the local
1129 ombudsman council if requested pursuant to subsection (9) must
1130 be by telephone or in person. This notice shall be given before
1131 the transfer, if possible, or as soon thereafter as practicable.
1132 The State Long-Term Care Ombudsman Program or a local
1133 ombudsman council conducting a review under this subsection
1134 shall do so within 24 hours after receipt of the request. The
1135 resident's file must be documented to show who was contacted,
1136 whether the contact was by telephone or in person, and the date
1137 and time of the contact. If the notice is not given in writing,
1138 written notice meeting the requirements of subsection (8) must
1139 be given the next working day.

1140 (12) After receipt of any notice required under this
1141 section, the State Long-Term Care Ombudsman Program or local



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1142 ombudsman council may request a private informal conversation
1143 with a resident to whom the notice is directed, and, if known, a
1144 family member or the resident's legal guardian or designee, to
1145 ensure that the facility is proceeding with the discharge or
1146 transfer in accordance with ~~the requirements of~~ this section. If
1147 requested, the State Long-Term Care Ombudsman Program or the
1148 local ombudsman council shall assist the resident with filing an
1149 appeal of the proposed discharge or transfer.

1150 (13) The following persons must be present at all hearings
1151 authorized under this section:

1152 (a) The resident, or the resident's legal representative or
1153 designee.

1154 (b) The facility administrator, or the facility's legal
1155 representative or designee.

1156

1157 A representative of the State Long-Term Care Ombudsman Program
1158 or the local long-term care ombudsman council may be present at
1159 all hearings authorized by this section.

1160 (14) In any hearing under this section, the following
1161 information concerning the parties shall be confidential and
1162 exempt from ~~the provisions of~~ s. 119.07(1):

1163 (a) Names and addresses.

1164 (b) Medical services provided.

1165 (c) Social and economic conditions or circumstances.

1166 (d) Evaluation of personal information.

1167 (e) Medical data, including diagnosis and past history of
1168 disease or disability.

1169 (f) Any information received verifying income eligibility
1170 and amount of medical assistance payments. Income information



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1171 received from the Social Security Administration or the Internal
1172 Revenue Service must be safeguarded according to the
1173 requirements of the agency that furnished the data.

1174
1175 The exemption created by this subsection does not prohibit
1176 access to such information by the State Long-Term Care Ombudsman
1177 Program or a local long-term care ombudsman council upon
1178 request, by a reviewing court if such information is required to
1179 be part of the record upon subsequent review, or as specified in
1180 s. 24(a), Art. I of the State Constitution.

1181 Section 23. Paragraph (d) of subsection (5) of section
1182 400.162, Florida Statutes, is amended to read:

1183 400.162 Property and personal affairs of residents.—

1184 (5)

1185 (d) If, at any time during the period for which a license
1186 is issued, a licensee that has not purchased a surety bond or
1187 entered into a self-insurance agreement, as provided in
1188 paragraphs (b) and (c), is requested to provide safekeeping for
1189 the personal funds of a resident, the licensee shall notify the
1190 agency of the request and make application for a surety bond or
1191 for participation in a self-insurance agreement within 7 days
1192 after ~~of~~ the request, exclusive of weekends and holidays. Copies
1193 of the application, along with written documentation of related
1194 correspondence with an insurance agency or group, shall be
1195 maintained by the licensee for review by the agency and the
1196 State ~~Nursing Home and Long-Term Care Facility~~ Ombudsman Program
1197 Council.

1198 Section 24. Subsections (1) and (4) of section 400.19,
1199 Florida Statutes, are amended to read:



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1200 400.19 Right of entry and inspection.-

1201 (1) In accordance with part II of chapter 408, the agency
1202 and any of its ~~duly~~ designated officers ~~officer~~ or employees
1203 ~~employee thereof~~ or a representative of ~~member of~~ the State
1204 Long-Term Care Ombudsman Program Council or the local long-term
1205 care ombudsman council shall have the right to enter upon and
1206 into the premises of any facility licensed pursuant to this
1207 part, or any distinct nursing home unit of a hospital licensed
1208 under chapter 395 or any freestanding facility licensed under
1209 chapter 395 which ~~that~~ provides extended care or other long-term
1210 care services, at any reasonable time in order to determine the
1211 state of compliance with ~~the provisions of~~ this part, part II of
1212 chapter 408, and applicable rules in force pursuant thereto. The
1213 agency shall, within 60 days after receipt of a complaint made
1214 by a resident or resident's representative, complete its
1215 investigation and provide to the complainant its findings and
1216 resolution.

1217 (4) The agency shall conduct unannounced onsite facility
1218 reviews following written verification of licensee noncompliance
1219 in instances in which a representative of the State Long-Term
1220 Care Ombudsman Program or long-term care ombudsman council,
1221 pursuant to ss. 400.0071 and 400.0075, has received a complaint
1222 and has documented deficiencies in resident care or in the
1223 physical plant of the facility that threaten the health, safety,
1224 or security of residents, or when the agency documents through
1225 inspection that conditions in a facility present a direct or
1226 indirect threat to the health, safety, or security of residents.
1227 However, the agency shall conduct unannounced onsite reviews
1228 every 3 months of each facility while the facility has a



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1229 conditional license. Deficiencies related to physical plant do
1230 not require followup reviews after the agency has determined
1231 that correction of the deficiency has been accomplished and that
1232 the correction is of the nature that continued compliance can be
1233 reasonably expected.

1234 Section 25. Subsection (6) and paragraph (c) of subsection
1235 (7) of section 400.23, Florida Statutes, are amended to read:

1236 400.23 Rules; evaluation and deficiencies; licensure
1237 status.—

1238 (6) Before ~~Prior to~~ conducting a survey of the facility,
1239 the survey team shall obtain a copy of the local long-term care
1240 ombudsman council report on the facility. Problems noted in the
1241 report shall be incorporated into and followed up through the
1242 agency's inspection process. This procedure does not preclude
1243 the State Long-Term Care Ombudsman Program or local long-term
1244 care ombudsman council from requesting the agency to conduct a
1245 followup visit to the facility.

1246 (7) The agency shall, at least every 15 months, evaluate
1247 all nursing home facilities and make a determination as to the
1248 degree of compliance by each licensee with the established rules
1249 adopted under this part as a basis for assigning a licensure
1250 status to that facility. The agency shall base its evaluation on
1251 the most recent inspection report, taking into consideration
1252 findings from other official reports, surveys, interviews,
1253 investigations, and inspections. In addition to license
1254 categories authorized under part II of chapter 408, the agency
1255 shall assign a licensure status of standard or conditional to
1256 each nursing home.

1257 (c) In evaluating the overall quality of care and services



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1258 and determining whether the facility will receive a conditional
1259 or standard license, the agency shall consider the needs and
1260 limitations of residents in the facility and the results of
1261 interviews and surveys of a representative sampling of
1262 residents, families of residents, representatives of the State
1263 Long-Term Care Ombudsman Program ~~ombudsman council members in~~
1264 ~~the planning and service area in which the facility is located,~~
1265 guardians of residents, and staff of the nursing home facility.

1266 Section 26. Paragraph (a) of subsection (3), paragraph (f)
1267 of subsection (5), and subsection (6) of section 400.235,
1268 Florida Statutes, is amended to read:

1269 400.235 Nursing home quality and licensure status; Gold
1270 Seal Program.—

1271 (3) (a) The Gold Seal Program shall be developed and
1272 implemented by the Governor's Panel on Excellence in Long-Term
1273 Care which shall operate under the authority of the Executive
1274 Office of the Governor. The panel shall be composed of three
1275 persons appointed by the Governor, to include a consumer
1276 advocate for senior citizens and two persons with expertise in
1277 the fields of quality management, service delivery excellence,
1278 or public sector accountability; three persons appointed by the
1279 Secretary of Elderly Affairs, to include an active member of a
1280 nursing facility family and resident care council and a member
1281 of the University Consortium on Aging; a representative of the
1282 State Long-Term Care Ombudsman Program; one person appointed by
1283 the Florida Life Care Residents Association; one person
1284 appointed by the State Surgeon General; two persons appointed by
1285 the Secretary of Health Care Administration; one person
1286 appointed by the Florida Association of Homes for the Aging; and



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1287 one person appointed by the Florida Health Care Association.
1288 Vacancies on the panel shall be filled in the same manner as the
1289 original appointments.

1290 (5) Facilities must meet the following additional criteria
1291 for recognition as a Gold Seal Program facility:

1292 (f) Verification of Evidence an outstanding minimal record
1293 regarding the number and types of substantiated complaints
1294 reported to the State Long-Term Care Ombudsman Program Council
1295 within the 30 months preceding application for the program.

1296
1297 A facility assigned a conditional licensure status may not
1298 qualify for consideration for the Gold Seal Program until after
1299 it has operated for 30 months with no class I or class II
1300 deficiencies and has completed a regularly scheduled relicensure
1301 survey.

1302 (6) The agency, nursing facility industry organizations,
1303 consumers, State Long-Term Care Ombudsman Program Council, and
1304 members of the community may recommend to the Governor
1305 facilities that meet the established criteria for consideration
1306 for and award of the Gold Seal. The panel shall review nominees
1307 and make a recommendation to the Governor for final approval and
1308 award. The decision of the Governor is final and is not subject
1309 to appeal.

1310 Section 27. Subsections (18) through (28) of section
1311 415.102, Florida Statutes, are redesignated as subsections (19)
1312 through and (29), respectively, and a new subsection (18) is
1313 added to that section, to read:

1314 415.102 Definitions of terms used in ss. 415.101-415.113.-
1315 As used in ss. 415.101-415.113, the term:



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1316 (18) "Office" has the same meaning as in s. 400.0060.
1317 Section 28. Paragraph (a) of subsection (1) of section
1318 415.1034, Florida Statutes, is amended to read:
1319 415.1034 Mandatory reporting of abuse, neglect, or
1320 exploitation of vulnerable adults; mandatory reports of death.-
1321 (1) MANDATORY REPORTING.-
1322 (a) Any person, including, but not limited to, any:
1323 1. Physician, osteopathic physician, medical examiner,
1324 chiropractic physician, nurse, paramedic, emergency medical
1325 technician, or hospital personnel engaged in the admission,
1326 examination, care, or treatment of vulnerable adults;
1327 2. Health professional or mental health professional other
1328 than one listed in subparagraph 1.;
1329 3. Practitioner who relies solely on spiritual means for
1330 healing;
1331 4. Nursing home staff; assisted living facility staff;
1332 adult day care center staff; adult family-care home staff;
1333 social worker; or other professional adult care, residential, or
1334 institutional staff;
1335 5. State, county, or municipal criminal justice employee or
1336 law enforcement officer;
1337 6. ~~An~~ Employee of the Department of Business and
1338 Professional Regulation conducting inspections of public lodging
1339 establishments under s. 509.032;
1340 7. Florida advocacy council or Disability Rights Florida
1341 member or a representative of the State Long-Term Care Ombudsman
1342 Program ~~long-term care ombudsman council member~~; or
1343 8. Bank, savings and loan, or credit union officer,
1344 trustee, or employee,



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1345
1346 who knows, or has reasonable cause to suspect, that a vulnerable
1347 adult has been or is being abused, neglected, or exploited shall
1348 immediately report such knowledge or suspicion to the central
1349 abuse hotline.

1350 Section 29. Subsection (1) of section 415.104, Florida
1351 Statutes, is amended to read:

1352 415.104 Protective investigations of cases of abuse,
1353 neglect, or exploitation of vulnerable adults; transmittal of
1354 records to state attorney.—

1355 (1) The department shall, upon receipt of a report alleging
1356 abuse, neglect, or exploitation of a vulnerable adult, begin
1357 within 24 hours a protective investigation of the facts alleged
1358 therein. If a caregiver refuses to allow the department to begin
1359 a protective investigation or interferes with the conduct of
1360 such an investigation, the appropriate law enforcement agency
1361 shall be contacted for assistance. If, during the course of the
1362 investigation, the department has reason to believe that the
1363 abuse, neglect, or exploitation is perpetrated by a second
1364 party, the appropriate law enforcement agency and state attorney
1365 shall be orally notified. The department and the law enforcement
1366 agency shall cooperate to allow the criminal investigation to
1367 proceed concurrently with, and not be hindered by, the
1368 protective investigation. The department shall make a
1369 preliminary written report to the law enforcement agencies
1370 within 5 working days after the oral report. The department
1371 shall, within 24 hours after receipt of the report, notify the
1372 appropriate Florida local advocacy council, or the State Long-
1373 Term Care Ombudsman Program ~~long-term care ombudsman council,~~



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1374 when appropriate, that an alleged abuse, neglect, or
1375 exploitation perpetrated by a second party has occurred. Notice
1376 to the Florida local advocacy council or the State Long-Term
1377 Care Ombudsman Program ~~long-term care ombudsman council~~ may be
1378 accomplished orally or in writing and shall include the name and
1379 location of the vulnerable adult alleged to have been abused,
1380 neglected, or exploited and the nature of the report.

1381 Section 30. Subsection (8) of section 415.1055, Florida
1382 Statutes, is amended to read:

1383 415.1055 Notification to administrative entities.—

1384 (8) At the conclusion of a protective investigation at a
1385 facility, the department shall notify either the Florida local
1386 advocacy council or the State Long-Term Care Ombudsman Program
1387 or the long-term care ombudsman council of the results of the
1388 investigation. This notification must be in writing.

1389 Section 31. Subsection (2) of section 415.106, Florida
1390 Statutes, is amended to read:

1391 415.106 Cooperation by the department and criminal justice
1392 and other agencies.—

1393 (2) To ensure coordination, communication, and cooperation
1394 with the investigation of abuse, neglect, or exploitation of
1395 vulnerable adults, the department shall develop and maintain
1396 interprogram agreements or operational procedures among
1397 appropriate departmental programs and the State Long-Term Care
1398 Ombudsman Program Council, the Florida Statewide Advocacy
1399 Council, and other agencies that provide services to vulnerable
1400 adults. These agreements or procedures must cover such subjects
1401 as the appropriate roles and responsibilities of the department
1402 in identifying and responding to reports of abuse, neglect, or



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1403 exploitation of vulnerable adults; the provision of services;
1404 and related coordinated activities.

1405 Section 32. Paragraph (g) of subsection (3) of section
1406 415.107, Florida Statutes, is amended to read:

1407 415.107 Confidentiality of reports and records.—

1408 (3) Access to all records, excluding the name of the
1409 reporter which shall be released only as provided in subsection
1410 (6), shall be granted only to the following persons, officials,
1411 and agencies:

1412 (g) Any appropriate official of the Florida advocacy
1413 council, State Long-Term Care Ombudsman Program or long-term
1414 care ombudsman council investigating a report of known or
1415 suspected abuse, neglect, or exploitation of a vulnerable adult.

1416 Section 33. Present subsections (16) through (26) of
1417 section 429.02, Florida Statutes, are redesignated as
1418 subsections (17) through (27), respectively, present subsections
1419 (11) and (20) are amended, and a new subsection (16) is added to
1420 that section to read:

1421 429.02 Definitions.—When used in this part, the term:

1422 (11) "Extended congregate care" means acts beyond those
1423 authorized in subsection (17) ~~(16)~~ that may be performed
1424 pursuant to part I of chapter 464 by persons licensed thereunder
1425 while carrying out their professional duties, and other
1426 supportive services which may be specified by rule. The purpose
1427 of such services is to enable residents to age in place in a
1428 residential environment despite mental or physical limitations
1429 that might otherwise disqualify them from residency in a
1430 facility licensed under this part.

1431 (16) "Office" has the same meaning as in s. 400.0060.



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1432 (17)~~(16)~~ "Personal services" means direct physical
1433 assistance with or supervision of the activities of daily living
1434 and the self-administration of medication and other similar
1435 services which the department may define by rule. "Personal
1436 services" shall not be construed to mean the provision of
1437 medical, nursing, dental, or mental health services.

1438 (18)~~(17)~~ "Physical restraint" means a device which
1439 physically limits, restricts, or deprives an individual of
1440 movement or mobility, including, but not limited to, a half-bed
1441 rail, a full-bed rail, a geriatric chair, and a posey restraint.
1442 The term "physical restraint" shall also include any device
1443 which was not specifically manufactured as a restraint but which
1444 has been altered, arranged, or otherwise used for this purpose.
1445 The term shall not include bandage material used for the purpose
1446 of binding a wound or injury.

1447 (19)~~(18)~~ "Relative" means an individual who is the father,
1448 mother, stepfather, stepmother, son, daughter, brother, sister,
1449 grandmother, grandfather, great-grandmother, great-grandfather,
1450 grandson, granddaughter, uncle, aunt, first cousin, nephew,
1451 niece, husband, wife, father-in-law, mother-in-law, son-in-law,
1452 daughter-in-law, brother-in-law, sister-in-law, stepson,
1453 stepdaughter, stepbrother, stepsister, half brother, or half
1454 sister of an owner or administrator.

1455 (20)~~(19)~~ "Resident" means a person 18 years of age or
1456 older, residing in and receiving care from a facility.

1457 (21)~~(20)~~ "Resident's representative or designee" means a
1458 person other than the owner, or an agent or employee of the
1459 facility, designated in writing by the resident, if legally
1460 competent, to receive notice of changes in the contract executed



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1461 pursuant to s. 429.24; to receive notice of and to participate
1462 in meetings between the resident and the facility owner,
1463 administrator, or staff concerning the rights of the resident;
1464 to assist the resident in contacting the State Long-Term Care
1465 Ombudsman Program or local ombudsman council if the resident has
1466 a complaint against the facility; or to bring legal action on
1467 behalf of the resident pursuant to s. 429.29.

1468 ~~(22)~~~~(21)~~ "Service plan" means a written plan, developed and
1469 agreed upon by the resident and, if applicable, the resident's
1470 representative or designee or the resident's surrogate,
1471 guardian, or attorney in fact, if any, and the administrator or
1472 designee representing the facility, which addresses the unique
1473 physical and psychosocial needs, abilities, and personal
1474 preferences of each resident receiving extended congregate care
1475 services. The plan shall include a brief written description, in
1476 easily understood language, of what services shall be provided,
1477 who shall provide the services, when the services shall be
1478 rendered, and the purposes and benefits of the services.

1479 ~~(23)~~~~(22)~~ "Shared responsibility" means exploring the
1480 options available to a resident within a facility and the risks
1481 involved with each option when making decisions pertaining to
1482 the resident's abilities, preferences, and service needs,
1483 thereby enabling the resident and, if applicable, the resident's
1484 representative or designee, or the resident's surrogate,
1485 guardian, or attorney in fact, and the facility to develop a
1486 service plan which best meets the resident's needs and seeks to
1487 improve the resident's quality of life.

1488 ~~(24)~~~~(23)~~ "Supervision" means reminding residents to engage
1489 in activities of daily living and the self-administration of



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1490 medication, and, when necessary, observing or providing verbal
1491 cuing to residents while they perform these activities.

1492 ~~(25)~~~~(24)~~ "Supplemental security income," Title XVI of the
1493 Social Security Act, means a program through which the Federal
1494 Government guarantees a minimum monthly income to every person
1495 who is age 65 or older, or disabled, or blind and meets the
1496 income and asset requirements.

1497 ~~(26)~~~~(25)~~ "Supportive services" means services designed to
1498 encourage and assist aged persons or adults with disabilities to
1499 remain in the least restrictive living environment and to
1500 maintain their independence as long as possible.

1501 ~~(27)~~~~(26)~~ "Twenty-four-hour nursing supervision" means
1502 services that are ordered by a physician for a resident whose
1503 condition requires the supervision of a physician and continued
1504 monitoring of vital signs and physical status. Such services
1505 shall be: medically complex enough to require constant
1506 supervision, assessment, planning, or intervention by a nurse;
1507 required to be performed by or under the direct supervision of
1508 licensed nursing personnel or other professional personnel for
1509 safe and effective performance; required on a daily basis; and
1510 consistent with the nature and severity of the resident's
1511 condition or the disease state or stage.

1512 Section 34. Subsection (9) of section 429.19, Florida
1513 Statutes, is amended to read:

1514 429.19 Violations; imposition of administrative fines;
1515 grounds.—

1516 (9) The agency shall develop and disseminate an annual list
1517 of all facilities sanctioned or fined for violations of state
1518 standards, the number and class of violations involved, the



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1519 penalties imposed, and the current status of cases. The list
1520 shall be disseminated, at no charge, to the Department of
1521 Elderly Affairs, the Department of Health, the Department of
1522 Children and Families, the Agency for Persons with Disabilities,
1523 the area agencies on aging, the Florida Statewide Advocacy
1524 Council, ~~and~~ the State Long-Term Care Ombudsman Program and
1525 state and local ombudsman councils. The Department of Children
1526 and Families shall disseminate the list to service providers
1527 under contract to the department who are responsible for
1528 referring persons to a facility for residency. The agency may
1529 charge a fee commensurate with the cost of printing and postage
1530 to other interested parties requesting a copy of this list. This
1531 information may be provided electronically or through the
1532 agency's Internet site.

1533 Section 35. Subsection (8) of section 429.26, Florida
1534 Statutes, is amended to read:

1535 429.26 Appropriateness of placements; examinations of
1536 residents.—

1537 (8) The Department of Children and Families may require an
1538 examination for supplemental security income and optional state
1539 supplementation recipients residing in facilities at any time
1540 and shall provide the examination whenever a resident's
1541 condition requires it. Any facility administrator; personnel of
1542 the agency, the department, or the Department of Children and
1543 Families; or a representative of the State Long-Term Care
1544 Ombudsman Program ~~long-term care ombudsman council member~~ who
1545 believes a resident needs to be evaluated shall notify the
1546 resident's case manager, who shall take appropriate action. A
1547 report of the examination findings shall be provided to the



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1548 resident's case manager and the facility administrator to help
1549 the administrator meet his or her responsibilities under
1550 subsection (1).

1551 Section 36. Subsection (2) and paragraph (b) of subsection
1552 (3) of section 429.28, Florida Statutes, are amended to read:

1553 429.28 Resident bill of rights.—

1554 (2) The administrator of a facility shall ensure that a
1555 written notice of the rights, obligations, and prohibitions set
1556 forth in this part is posted in a prominent place in each
1557 facility and read or explained to residents who cannot read.
1558 This notice must ~~shall~~ include the statewide toll-free telephone
1559 number and e-mail address of the State Long-Term Care Ombudsman
1560 Program and the telephone number of ~~name, address, and telephone~~
1561 ~~numbers~~ of the local ombudsman council and the Elder Abuse
1562 Hotline operated by the Department of Children and Families
1563 ~~central abuse hotline~~ and, when applicable, the Advocacy Center
1564 for Persons with Disabilities, Inc., and the Florida local
1565 advocacy council, where complaints may be lodged. The facility
1566 must ensure a resident's access to a telephone to call the State
1567 Long Term Care Ombudsman Program or local ombudsman council, the
1568 Elder Abuse Hotline operated by the Department of Children and
1569 Families ~~central abuse hotline~~, Advocacy Center for Persons with
1570 Disabilities, Inc., and the Florida local advocacy council.

1571 (3)

1572 (b) In order to determine whether the facility is
1573 adequately protecting residents' rights, the biennial survey
1574 shall include private informal conversations with a sample of
1575 residents and consultation with the ombudsman council in the
1576 district ~~planning and service area~~ in which the facility is



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1577 located to discuss residents' experiences within the facility.

1578 Section 37. Section 429.34, Florida Statutes, is amended to
1579 read:

1580 429.34 Right of entry and inspection.—In addition to the
1581 requirements of s. 408.811, a any duly designated officer or
1582 employee of the department, the Department of Children and
1583 Families, the Medicaid Fraud Control Unit of the Office of the
1584 Attorney General, the state or local fire marshal, or a
1585 representative of the State Long-Term Care Ombudsman Program or
1586 a member of the state or local long-term care ombudsman council
1587 may shall have the right to enter unannounced upon and into the
1588 premises of any facility licensed under ~~pursuant to~~ this part in
1589 order to determine the state of compliance with ~~the provisions~~
1590 ~~of~~ this part, part II of chapter 408, and applicable rules. Data
1591 collected by the State Long-Term Care Ombudsman Program, ~~state~~
1592 ~~or~~ local long-term care ombudsman councils or the state or local
1593 advocacy councils may be used by the agency in investigations
1594 involving violations of regulatory standards.

1595 Section 38. Subsection (2) of section 429.35, Florida
1596 Statutes, is amended to read:

1597 429.35 Maintenance of records; reports.—

1598 (2) Within 60 days after the date of the biennial
1599 inspection visit required under s. 408.811 or within 30 days
1600 after the date of any interim visit, the agency shall forward
1601 the results of the inspection to the local ombudsman council in
1602 in the district ~~whose planning and service area, as defined in~~
1603 ~~part II of chapter 400, where~~ the facility is located; to at
1604 least one public library or, in the absence of a public library,
1605 the county seat in the county in which the inspected assisted



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1606 living facility is located; and, when appropriate, to the
1607 district Adult Services and Mental Health Program Offices.

1608 Section 39. Subsection (6) of section 429.67, Florida
1609 Statutes, is amended to read:

1610 429.67 Licensure.—

1611 (6) In addition to the requirements of s. 408.811, access
1612 to a licensed adult family-care home must be provided at
1613 reasonable times for the appropriate officials of the
1614 department, the Department of Health, the Department of Children
1615 and Families, the agency, and the State Fire Marshal, who are
1616 responsible for the development and maintenance of fire, health,
1617 sanitary, and safety standards, to inspect the facility to
1618 assure compliance with these standards. In addition, access to a
1619 licensed adult family-care home must be provided at reasonable
1620 times to representatives of the State Long Term Care Ombudsman
1621 Program ~~for the local long-term care ombudsman council.~~

1622 Section 40. Subsection (2) of section 429.85, Florida
1623 Statutes, is amended to read:

1624 429.85 Residents' bill of rights.—

1625 (2) The provider shall ensure that residents and their
1626 legal representatives are made aware of the rights, obligations,
1627 and prohibitions set forth in this part. Residents must also be
1628 given the statewide toll-free telephone number and e-mail
1629 address of the State Long-Term Care Ombudsman Program, the
1630 telephone number ~~names, addresses, and telephone numbers~~ of the
1631 local ombudsman council and the Elder Abuse Hotline operated by
1632 the Department of Children and Families ~~the central abuse~~
1633 ~~hotline~~ where they may lodge complaints.

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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 defining
terms; 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; revising the duties and
authority of the state ombudsman; 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; requiring each district to conduct
quarterly public meetings; providing duties of
representatives of the office in the districts;
revising the appointments of and qualifications for
district ombudsmen; prohibiting certain individuals



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1664 from serving as ombudsmen; amending s. 400.0070, F.S.;

1665 providing conditions under which a representative of

1666 the office could be found to have a conflict of

1667 interest; requiring the Department of Elderly Affairs,

1668 in consultation with the state ombudsman, to define by

1669 rule what constitutes a conflict of interest; amending

1670 s. 400.0071, F.S.; requiring the Department of Elderly

1671 Affairs to consult with the state ombudsman to adopt

1672 rules pertaining to complaint procedures; amending s.

1673 400.0073, F.S.; providing procedures for investigation

1674 of complaints; amending s. 400.0074, F.S.; revising

1675 procedures for conducting onsite administrative

1676 assessments; authorizing the department to adopt

1677 rules; amending s. 400.0075, F.S.; revising complaint

1678 notification and resolution procedures; amending s.

1679 400.0078, F.S.; providing for a resident or

1680 representative of a resident to receive additional

1681 information regarding resident rights; amending s.

1682 400.0079, F.S.; providing immunity from liability for

1683 a representative of the office under certain

1684 circumstances; amending s. 400.0081, F.S.; requiring

1685 long-term care facilities to provide representatives

1686 of the office with access to facilities, residents,

1687 and records for certain purposes; amending s.

1688 400.0083, F.S.; conforming provisions to changes made

1689 by the act; amending s. 400.0087, F.S.; providing for

1690 the office to coordinate ombudsman services with

1691 Disability Rights Florida; amending s. 400.0089, F.S.;

1692 conforming provisions to changes made by the act;



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1693 amending s. 400.0091, F.S.; revising training
1694 requirements for representatives of the office and
1695 ombudsmen; amending ss. 20.41, 400.021, 400.022,
1696 400.0255, 400.162, 400.19, 400.191, and 400.23, F.S.;
1697 conforming provisions to changes made by the act;
1698 amending s. 400.235, F.S.; conforming provisions to
1699 changes made by the act; revising the additional
1700 criteria for recognition as a Gold Seal Program
1701 facility; amending ss. 415.102, 415.1034, 415.104,
1702 415.1055, 415.106, 415.107, 429.02, 429.19, 429.26,
1703 429.28, 429.34, 429.35, 429.67, and 429.85, F.S.;
1704 conforming provisions to changes made by the act;
1705 providing an effective date.