

**SB 640** by **Braynon**; (Similar to H 0531) Public Health Trusts

**SB 1412** by **Joyner**; (Identical to H 0339) Closing the Gap Grant Program

**CS/SB 1134** by **HP, Detert**; Home Medical Equipment

**CS/SB 1192** by **HP, Sobel (CO-INTRODUCERS) Latvala, Soto, Flores**; (Similar to H 0995) Palliative Care

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**SB 1084** by **CJ**; (Similar to CS/H 0515) Public Assistance Fraud

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| 439384 | A | S | RCS | AHS, Garcia | btw L.171 - 172: | 04/09 04:28 PM |
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**CS/SB 508** by **CF, Detert**; (Similar to CS/H 0091) State Ombudsman Program

**CS/SB 1646** by **CU, HP**; (Compare to H 0167) Telemedicine

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| 651910 | A  | S | RE      | AHS, Garcia | Delete L.131 - 217:     | 04/11 04:45 PM |
| 259150 | AA | S | RE      | AHS, Garcia | Delete L.13:            | 04/11 04:45 PM |
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**APPROPRIATIONS SUBCOMMITTEE ON HEALTH AND**  
**HUMAN SERVICES**  
**Senator Grimsley, Chair**  
**Senator Flores, Vice Chair**

**MEETING DATE:** Wednesday, April 9, 2014  
**TIME:** 2:00 —3:00 p.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Grimsley, Chair; Senator Flores, Vice Chair; Senators Bean, Benacquisto, Galvano, Garcia, Gibson, Lee, Montford, Richter, Smith, Sobel, and Thrasher

| TAB | BILL NO. and INTRODUCER                                       | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION            |
|-----|---|--|-----------------------------|
| 1   | <b>SB 640</b><br>Braynon<br>(Similar H 531)                   | Public Health Trusts; Authorizing public health trusts to lease certain real property, etc.<br><br>HP 03/11/2014 Favorable<br>CA 03/25/2014 Favorable<br>AHS 04/09/2014 Favorable<br>AP  | Favorable<br>Yeas 12 Nays 0 |
| 2   | <b>SB 1412</b><br>Joyner<br>(Identical H 339)                 | Closing the Gap Grant Program; Adding a requirement for project proposals under the grant program to address racial and ethnic disparities in morbidity and mortality rates relating to sickle cell disease, etc.<br><br>HP 03/25/2014 Favorable<br>AHS 04/09/2014 Favorable<br>AP   | Favorable<br>Yeas 12 Nays 0 |
| 3   | <b>CS/SB 1134</b><br>Health Policy / Detert                   | Home Medical Equipment; Exempting allopathic, osteopathic, and chiropractic physicians who sell or rent electrostimulation medical equipment and supplies to their patients in the course of their practice from licensure as home medical equipment providers, etc.<br><br>HP 03/25/2014 Fav/CS<br>AHS 04/09/2014 Favorable<br>AP   | Favorable<br>Yeas 12 Nays 0 |
| 4   | <b>CS/SB 1192</b><br>Health Policy / Sobel<br>(Similar H 995) | Palliative Care; Creating the Palliative Care and Quality of Life Interdisciplinary Advisory Council; providing for membership on the council; providing for staggered terms; requiring the Department of Health to provide staff, information, and other assistance as necessary to the council; requiring the department to establish a palliative care consumer and professional information and education program; requiring the department to publish certain educational information and materials about palliative care on the department website, etc.<br><br>HP 03/25/2014 Fav/CS<br>AHS 04/09/2014 Temporarily Postponed<br>AP | Temporarily Postponed       |

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on Health and Human Services  
 Wednesday, April 9, 2014, 2:00 —3:00 p.m.

| TAB | BILL NO. and INTRODUCER   | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS  | COMMITTEE ACTION                    |
|-----|---|--|-------------------------------------|
| 5   | <b>SB 1084</b><br>Criminal Justice<br>(Similar CS/H 515)  | Public Assistance Fraud; Providing enhanced criminal penalties if the value of public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value exceeding specified amounts; providing for a reward for a report of original information relating to a violation of the state's public assistance fraud laws if the information and report meet specified requirements; requiring that a parent or caretaker relative who has been disqualified due to fraud have a protective payee designated to receive temporary cash assistance benefits for eligible children, etc.<br><br>AHS 03/05/2014<br>AHS 04/09/2014 Fav/CS<br>AP | Fav/CS<br>Yeas 7 Nays 5             |
| 6   | <b>CS/SB 508</b><br>Children, Families, and Elder Affairs / Detert<br>(Similar CS/H 91, Compare CS/CS/H 573, CS/CS/S 248) | State Ombudsman Program; Deleting references to ombudsman councils and transferring their responsibilities to representatives of the Office of State Long-Term Care Ombudsman; revising the duties and authority of the state ombudsman; revising duties and membership of the State Long-Term Care Ombudsman Council; providing duties of representatives of the office in the districts; revising the appointments of and qualifications for district ombudsmen; deleting provisions that provide for an election of a chair of a local council and the meeting times for the local council, etc.<br><br>CF 04/01/2014 Fav/CS<br>AHS 04/09/2014 Favorable<br>AP                          | Favorable<br>Yeas 12 Nays 0         |
| 7   | <b>CS/SB 1646</b><br>Communications, Energy, and Public Utilities / Health Policy<br>(Compare H 167, CS/H 751, S 70)      | Telemedicine; Creating the "Florida Telemedicine Act"; requiring specified practitioners providing telemedicine services to patients in this state to be licensed in this state; authorizing nonFlorida licensed physicians to meet alternative requirements; providing standards and prohibitions for the provision of telemedicine services; authorizing the use of telemedicine services in the diagnosis and treatment of the human eye; prohibiting a managed care plan under Medicaid from using telemedicine providers that are not physicians, etc.<br><br>CU 04/01/2014 Fav/CS<br>AHS 04/09/2014 Fav/1 Amendment<br>AP  | Fav/1 Amendment (<br>Yeas 12 Nays 0 |

Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

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BILL: SB 640

INTRODUCER: Senator Braynon

SUBJECT: Public Health Trusts

DATE: April 8, 2014

REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE  | ACTION           |
|----|----------------|----------------|------------|------------------|
| 1. | <u>Stovall</u> | <u>Stovall</u> | <u>HP</u>  | <b>Favorable</b> |
| 2. | <u>White</u>   | <u>Yeatman</u> | <u>CA</u>  | <b>Favorable</b> |
| 3. | <u>Brown</u>   | <u>Pigott</u>  | <u>AHS</u> | <b>Favorable</b> |
| 4. | _____          | _____          | <u>AP</u>  | _____            |

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**I. Summary:**

SB 640 authorizes the board of trustees of a public health trust to lease out office space without first advertising and soliciting bids for the office space.

The bill has an insignificant fiscal impact, if any.

**II. Present Situation:**

**Limitations on Public Health Trusts' Authority to Lease Office Space**

Chapter 73-102, Laws of Florida, authorized the governing body of each county to create a public health trust in and for the county. A public health trust's board of trustees, appointed by the governing body of the county, is responsible for the operation, governance, and management of a publicly funded health care facility designated by the county's governing body.<sup>1</sup>

Specifically, the board of trustees is empowered to:<sup>2</sup>

- Lease – either as lessee or lessor – or rent for any number of years and upon any terms and conditions, real property, except that the board shall not lease or rent, as lessor, any real property except in accordance with the requirements of s. 125.35 [F. S. 1973];
- Sue and be sued;
- Have a seal;
- Adopt bylaws, rules, and regulations for the board's responsibilities;
- Execute contracts;

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<sup>1</sup> See Part II of Chapter 154, Florida Statutes.

<sup>2</sup> Section 154.11(1), F.S. However, note that a public health trust may not impose any tax, issue bonds, or require the imposition of a tax or the issuance of any bond by the governing body of the county. Section 154.11(2), F.S.

- Acquire and hold title to real or personal property;
- Appoint and remove a chief executive officer of the trust;
- Establish and collect fees for using or receiving services from the facility;
- Accept gifts of money, services, or real or personal property;
- Appoint, remove, or suspend employees or agents of the board, fix their compensation, and adopt personnel and management policies;
- Provide for employee benefits;
- Cooperate with and contract with any governmental agency or instrumentality, federal, state, municipal, or county;
- Adopt rules and regulations for the management and use of any properties under its control;
- Appoint originally the staff of physicians to practice in a designated facility and approve bylaws and rules to be adopted by the medical staff addressing the method of appointing or removing additional staff members; and
- Employ certified public accountants and legal counsel.

Section 125.35, F. S., authorizes a board of county commissioners to sell and convey any real or personal property, and to lease real property belonging to the county, whenever the county believes it is in its best interest to do so. However, the sale or lease must be awarded to the highest and best bidder for the highest and best use. Each sale or lease must be noticed by publishing once a week, for at least two weeks, in a newspaper of general circulation published in the county. The highest bid must be accepted, unless all are rejected because all are too low. A surety bond may be required of each bid submitted.

### **Jackson Health System**

A Public Health Trust was created in 1973 by the Miami-Dade<sup>3</sup> Board of County Commissioners as an independent governing body for Jackson Memorial Hospital. In 2003, the Board of County Commissioners amended the Miami-Dade County Code to expand the responsibilities of the Public Health Trust countywide to health care facilities within the Jackson Health System. The Trust is composed of volunteer citizens who set policies that assure that the Jackson Health System is responsive to community needs. This “citizen body” provides leadership for joint planning between Jackson Health System, the University of Miami’s Miller School of Medicine, Miami-Dade County, and other private and community organizations.<sup>4</sup>

Representatives of Jackson Health System have indicated that the requirements under s. 125.35, F.S., (1973) prove cumbersome, time-consuming, and wasteful when trying to recruit physicians and other health care practitioners who desire to lease office space in the hospital. The only bid typically received is from one practitioner.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 154.11, F.S., to authorize the board of trustees of a public health trust (Jackson Health System) to lease out its office space without first advertising and soliciting bids for the office space.

<sup>3</sup> In 1973, the county was named Dade County.

<sup>4</sup> See Jackson Health System, *Public Health Trust*, <http://www.jacksonhealth.org/trust.asp>, (Last visited March 18, 2014).

**Section 2** provides an effective date of July 1, 2014.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

No significant fiscal impact is expected. Jackson Health System, as well as any other public health trust, will be able to provide available office space to physicians and other health care professionals without the expense and delay of advertising and proceeding through a bid process.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 154.11 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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By Senator Braynon

36-00368A-14

2014640\_\_

1                           A bill to be entitled  
2       An act relating to public health trusts; amending s.  
3       154.11, F.S.; authorizing public health trusts to  
4       lease certain real property; providing an effective  
5       date.  
6  
7   Be It Enacted by the Legislature of the State of Florida:  
8  
9       Section 1. Paragraph (f) of subsection (1) of section  
10      154.11, Florida Statutes, is amended to read:  
11      154.11 Powers of board of trustees.-  
12      (1) The board of trustees of each public health trust shall  
13      be deemed to exercise a public and essential governmental  
14      function of both the state and the county and in furtherance  
15      thereof it shall, subject to limitation by the governing body of  
16      the county in which such board is located, have all of the  
17      powers necessary or convenient to carry out the operation and  
18      governance of designated health care facilities, including, but  
19      without limiting the generality of, the foregoing:  
20      (f) To lease, ~~either~~ as lessee or lessor, or rent for any  
21      number of years and upon any terms and conditions real property,  
22      except that the board shall not lease or rent, as lessor, any  
23      real property other than office space controlled by a public  
24      health trust, except in accordance with the requirements of s.  
25      125.35, Florida Statutes ~~{F.S. 1973}~~.  
26      Section 2. This act shall take effect July 1, 2014.





# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

## SENATOR OSCAR BRAYNON II

*Democratic Whip*  
36th District

March 27, 2014

Senator Denise Grimsley, Chair  
Health and Human Services AP.  
306 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairwoman Grimsley:

This letter is to request that **Senate Bill #640**, relating to ***Public Health Trusts*** be placed on the agenda of the next scheduled meeting of the committee. SB 640 has passed its first two committees of reference unanimously.

*SB 640 authorizes public health trusts to lease certain real property, etc.*

Thank you for consideration of this request.

Sincerely,

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

Senator Braynon  
District 36

cc. *Scarlet Pigott, Staff Director*

*Robin Auber, Committee Administrative Assistant- Room 201 Capitol*

REPLY TO:

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

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

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BILL: SB 1412

INTRODUCER: Senator Joyner

SUBJECT: Closing the Gap Grant Program

DATE: April 8, 2014                      REVISED: \_\_\_\_\_

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|    | ANALYST                     | STAFF DIRECTOR              | REFERENCE  | ACTION                      |
|----|-----------------------------|-----------------------------|------------|-----------------------------|
| 1. | <u>Peterson</u>             | <u>Stovall</u>              | <u>HP</u>  | <b>Favorable</b>            |
| 2. | <u>Brown</u>                | <u>Pigott</u>               | <u>AHS</u> | <b>Favorable</b>            |
| 3. | <u>                    </u> | <u>                    </u> | <u>AP</u>  | <u>                    </u> |

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**I. Summary:**

SB 1412 expands the potential focus of “Closing the Gap” projects to include sickle cell disease. The “Closing the Gap” program provides grants for activities designed to reduce racial and ethnic health disparities.

The bill has no fiscal impact.

**II. Present Situation:**

**The Closing the Gap Grant Program**

In 2000, the Legislature created the Reducing the Racial and Ethnic Health Disparities: “Closing the Gap” grant program, to stimulate the development of community and neighborhood-based projects to improve health outcomes of racial and ethnic populations.<sup>1</sup> The program is administered by the Department of Health (DOH). Grants are awarded for one year but may be renewed annually – subject to the availability of funds – upon the approval of the DOH based on the achievement of quality standards, objectives, and outcomes.<sup>2</sup> Grants require a local match of one dollar for every three dollars awarded, although a portion<sup>3</sup> of the match may be in-kind, in the form of free services or human resources.<sup>4</sup>

Applications for grants must address each of the following required items:<sup>5</sup>

- The purpose and objectives of the project and which of the following racial or ethnic disparities will be addressed:

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<sup>1</sup> Section 381.7352, F.S.

<sup>2</sup> Section 381.7356(4), F.S.

<sup>3</sup> Up to 50% in counties over 50,000 in population and 100% in counties of 50,000 or less. (s. 381.7355(2)(a), F.S.)

<sup>4</sup> Section 381.7356(2), F.S.

<sup>5</sup> Section 381.7355(2), F.S.

- Decreasing racial and ethnic disparities in maternal and infant mortality rates or oral health care;
- Decreasing racial and ethnic disparities in morbidity and mortality rates relating to cancer, HIV/AIDS, cardiovascular disease, or diabetes; or
- Increasing adult and child immunization rates in certain racial and ethnic populations;
- Identification and relevance of the target population;
- Methods for obtaining baseline health status data and assessment of community health needs;
- Mechanisms for mobilizing community resources and gaining local commitment;
- Development and implementation of health promotion and disease prevention interventions;
- Mechanisms and strategies for evaluating the project's objectives, procedures, and outcomes;
- A proposed work plan, including a timeline for implementing the project; and
- The likelihood that project activities will occur and continue in the absence of funding.

In the 2013-2014 fiscal year, the program received \$3.1 million in state funding and awarded 15 grants averaging between \$150,000 and \$200,000.<sup>6</sup>

### **Sickle Cell Disease**

Sickle cell disease (SCD) is a group of inherited red blood cell disorders. Healthy red blood cells are round. In someone who has SCD, the red blood cells become hard, sticky, and shaped like a sickle or the letter "C." The sickle cells die early, which causes a constant shortage of red blood cells, and the cells clog blood flow in small blood vessels, which can cause pain and other serious problems such as infection, acute chest syndrome, and stroke.<sup>7</sup>

Sickle cell disease is diagnosed with a blood test, most often at birth during routine newborn screening tests.<sup>8</sup> It is a genetic disorder, inherited when a child inherits the gene from both parents. The only cure is bone marrow or stem cell transplant.

The exact number of persons with SCD is not known. The Centers for Disease Control and Prevention estimates that:<sup>9</sup>

- SCD affects 90,000 to 100,000 Americans.
- SCD occurs among about 1 out of every 500 Black or African-American births.
- SCD occurs among about 1 out of every 36,000 Hispanic-American births.

In 2005, medical expenditures for children with SCD averaged \$11,702 for children with Medicaid coverage and \$14,772 for children with employer-sponsored insurance. About 40 percent of both groups had at least one hospital stay.<sup>10</sup>

<sup>6</sup> Conversation with Mike Mason, Director, Office of Minority Health, Florida Dept. of Health (Mar. 21, 2014).

<sup>7</sup> Centers for Disease Control and Prevention, *Facts About Sickle Cell Disease*, <http://www.cdc.gov/ncbddd/sicklecell/facts.html> (last visited Mar. 22, 2014).

<sup>8</sup> Florida's newborn screening program includes sickle cell among the genetic disorders that are tested in newborns.

<sup>9</sup> Centers for Disease Control and Prevention, *Sickle Cell Disease, Data and Statistics*, <http://www.cdc.gov/ncbddd/sicklecell/data.html> (last visited Mar. 22, 2014).

<sup>10</sup> *Id.*

**III. Effect of Proposed Changes:**

The bill adds projects with the goal of decreasing racial and ethnic disparities in morbidity and mortality rates relating to sickle cell disease, to the priority areas that a project receiving a Closing the Gap grant may address.

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

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

SB 1412 expands the types of community-based projects that may receive state funding. Actual amounts will result from the award of available funds and are unknown at this time.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 381.7355 of the Florida Statutes.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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By Senator Joyner

19-01229-14

20141412\_\_

1 A bill to be entitled  
 2 An act relating to the Closing the Gap grant program;  
 3 amending s. 381.7355, F.S.; adding a requirement for  
 4 project proposals under the grant program to address  
 5 racial and ethnic disparities in morbidity and  
 6 mortality rates relating to sickle cell disease;  
 7 providing an effective date.  
 8  
 9 Be It Enacted by the Legislature of the State of Florida:  
 10  
 11 Section 1. Paragraph (a) of subsection (2) of section  
 12 381.7355, Florida Statutes, is amended to read:  
 13 381.7355 Project requirements; review criteria.—  
 14 (2) A proposal must include each of the following elements:  
 15 (a) The purpose and objectives of the proposal, including  
 16 identification of the particular racial or ethnic disparity the  
 17 project will address. The proposal must address one or more of  
 18 the following priority areas:  
 19 1. Decreasing racial and ethnic disparities in maternal and  
 20 infant mortality rates.  
 21 2. Decreasing racial and ethnic disparities in morbidity  
 22 and mortality rates relating to cancer.  
 23 3. Decreasing racial and ethnic disparities in morbidity  
 24 and mortality rates relating to HIV/AIDS.  
 25 4. Decreasing racial and ethnic disparities in morbidity  
 26 and mortality rates relating to cardiovascular disease.  
 27 5. Decreasing racial and ethnic disparities in morbidity  
 28 and mortality rates relating to diabetes.  
 29 6. Increasing adult and child immunization rates in certain

Page 1 of 2

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

19-01229-14

20141412\_\_

30 racial and ethnic populations.  
 31 7. Decreasing racial and ethnic disparities in oral health  
 32 care.  
 33 8. Decreasing racial and ethnic disparities in morbidity  
 34 and mortality rates relating to sickle cell disease.  
 35 Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

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

8/16



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

**SELECT COMMITTEE:**  
Select Committee on Indian River Lagoon and Lake Okeechobee Basin

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

**SENATOR ARTHENIA L. JOYNER**  
19th District

March 25, 2014

Senator Denise Grimsley, Chair  
Senate Subcommittee on Health and Human Services Appropriations  
201 Capitol  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Madame Chair:

This is to request that Senate Bill 1412, Closing the Gap Grant Program, be placed on the agenda for the Subcommittee on Health and Human Services Appropriations. Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner  
State Senator, District 19

ALJ/rr

**REPLY TO:**

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

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

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BILL: CS/SB 1134

INTRODUCER: Health Policy Committee and Senator Detert

SUBJECT: Home Medical Equipment

DATE: April 8, 2014

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Looke   | Stovall        | HP        | <b>Fav/CS</b>    |
| 2. | Brown   | Pigott         | AHS       | <b>Favorable</b> |
| 3. |         |                | AP        |                  |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1134 amends s. 400.93, F.S., to exempt physicians who sell or rent electrostimulation medical equipment to their patients in the course of their practice from the requirement to be licensed as a home medical equipment provider.

The bill may have an indeterminate but likely insignificant fiscal impact.

**II. Present Situation:**

**Home Medical Equipment Providers**

Part VII of ch. 400, F.S., requires the Agency for Health Care Administration (AHCA) to license and regulate any person or entity that holds itself out to the public as performing any of the following functions:



- Providing home medical equipment<sup>1</sup> and services;<sup>2</sup>
- Accepting physician orders for home medical equipment and services; or
- Providing home medical equipment that typically requires home medical services.<sup>3</sup>

The following are exempt from the licensure requirement for home medical equipment providers:<sup>4</sup>

- Providers operated by the Department of Health (DOH) or the federal government;
- Nursing homes;
- Assisted living facilities;
- Home health agencies;
- Hospices;
- Intermediate care facilities;
- Homes for special services;
- Transitional living facilities;
- Hospitals;
- Ambulatory surgical centers;
- Manufacturers and wholesale distributors who do not sell directly to the consumer;
- Licensed health care practitioners who utilize home medical equipment in the course of their practice but do not sell or rent home medical equipment to their patients; and
- Pharmacies.

Currently there are 980 licensed home medical equipment providers, including those providers that are located out of the state but hold a Florida license.<sup>5</sup>

Any person or entity applying for a license as a home medical equipment provider must provide the AHCA with:

- A report of the medical equipment that will be provided, indicating whether it will be provided directly or by contract;
- A report of the services that will be provided, indicating whether the services will be provided directly or by contract;
- A list of the persons and entities with whom they contract;
- Documentation of accreditation, or an application for accreditation, from an organization recognized by the AHCA;
- Proof of liability insurance; and,

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<sup>1</sup> Defined in s. 400.925, F.S., as any product as defined by the Federal Drug Administration's Drugs, Devices and Cosmetics Act, any products reimbursed under the Medicare Part B Durable Medical Equipment benefits, or any products reimbursed under the Florida Medicaid durable medical equipment program. Home medical equipment includes oxygen and related respiratory equipment; manual, motorized, or customized wheelchairs and related seating and positioning, but does not include prosthetics or orthotics or any splints, braces, or aids custom fabricated by a licensed health care practitioner; motorized scooters; personal transfer systems; and specialty beds, for use by a person with a medical need.

<sup>2</sup> Defined in s. 400.925, F.S., as equipment management and consumer instruction, including selection, delivery, set-up, and maintenance of equipment, and other related services for the use of home medical equipment in the consumer's regular or temporary place of residence.

<sup>3</sup> Section 400.93(1) and (2), F.S.

<sup>4</sup> Section 400.93(5), F.S.

<sup>5</sup> See FloridaHealthFinder.gov list of home medical equipment providers printed on Mar. 19, 2014, on file with Senate Health Policy committee staff

- A \$300 application fee and a \$400 inspection fee, unless exempt from inspection.<sup>6</sup>

As a requirement of licensure, home medical equipment providers must comply with a number of minimum standards including, but not limited to:

- Offering and providing home medical equipment and services, as necessary, to consumers who purchase or rent any equipment that requires such services;
- Providing at least one category of equipment directly from their own inventory;
- Responding to orders for other equipment from either their own inventory or from the inventory of other contracted companies;
- Maintaining trained personnel to coordinate orders and scheduling of equipment and service deliveries;
- Ensuring that their delivery personnel are appropriately trained;
- Ensuring that patients are aware of their service hours and emergency service procedures;
- Answering any questions or complaints a consumer has about an item or the use of an item;
- Maintaining and repairing, either directly or through contract, items rented to consumers;
- Maintaining a safe premises;
- Preparing and maintaining a comprehensive emergency management plan that must be updated annually and provide for continuing home medical equipment services for life-supporting or life-sustaining equipment during an emergency;
- Maintaining a prioritized list of patients who need continued services during an emergency;<sup>7</sup>
- Complying with AHCA rules on minimum qualifications for personnel, including ensuring that all personnel have the necessary training and background screening;<sup>8</sup> and
- Maintaining a record for each patient that includes the equipment and services the provider has provided and which must contain:
  - Any physician's order or certificate of medical necessity;
  - Signed and dated delivery slips;
  - Notes reflecting all services, maintenance performed, and equipment exchanges;
  - The date on which rental equipment was retrieved; and,
  - Any other appropriate information.<sup>9</sup>

Licensed home medical equipment providers are subject to periodic inspections, including biennial licensure inspections, inspections directed by the federal Centers for Medicare and Medicaid Services, and licensure complaint investigations. A home medical equipment provider may submit a survey or inspection by an accrediting organization in lieu of a licensure inspection if the provider's accreditation is not provisional and the AHCA receives a report from the accrediting organization. A copy of a valid medical oxygen retail establishment permit issued by the DOH may also be submitted in lieu of a licensure inspection.<sup>10</sup>

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<sup>6</sup> Section 400.931, F.S.

<sup>7</sup> Section 400.934, F.S.

<sup>8</sup> AHCA Rule 59A-25.004, F.A.C. All home medical equipment provider personnel are also subject to a level 2 background screening per s. 400.953, F.S.

<sup>9</sup> Section 400.94, F.S.

<sup>10</sup> Section 400.933, F.S.

## **Electrostimulation Medical Equipment**

Devices that provide electrical stimulation can be used medically to treat a number of symptoms and conditions. Electrical stimulators can provide direct, alternating, pulsed, and pulsed waveforms of energy to the human body through electrodes that may be indwelling, implanted in the skin, or used on the surface of the skin.<sup>11</sup> Such devices may be used to exercise muscles, demonstrate a muscular response to stimulation of a nerve, relieve pain, relieve incontinence, and provide test measurements.<sup>12</sup>

Functional electrical stimulation (FES), also known as therapeutic electrical stimulation (TES), is used to prevent or reverse muscular atrophy and bone loss by stimulating paralyzed limbs. FES is designed to be used as a part of a self-administered, home-based rehabilitation program for the treatment of upper limb paralysis. An FES system consists of a custom-fitted device and control unit that allows the user to adjust the stimulation intensity and a training mode which can be gradually increased to avoid muscle fatigue.<sup>13</sup>

A second type of electrical stimulation is Transcutaneous Electrical Nerve Stimulation, or TENS. TENS is the application of electrical current through electrodes placed on the skin for pain control. It has been used to treat a variety of painful conditions, but there is “much controversy over which conditions to treat with TENS and the adequate parameters to use.”<sup>14</sup> Despite this controversy, there is some clinical evidence that TENS is able to relieve certain types of pain and “experimental pain studies and clinical trials are beginning to refine parameters of stimulation to obtain the best pain relief.”<sup>15</sup>

Other types of electrical stimulation include interferential therapy (IFT) and neuromuscular electrical stimulation (NMES). IFT uses two alternating currents simultaneously applied to the affected area through electrodes and which is proposed to relieve musculoskeletal pain and increase healing in soft tissue injuries and bone fractures. NMES involves the application of electrical currents through the skin to cause muscle contractions and is used to promote the restoration of nerve supply, prevent or slow atrophy, relax muscle spasms, and to promote voluntary control of muscles in patients who have lost muscle function.<sup>16</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 400.93, F.S., to exempt physicians who sell or rent electrostimulation medical equipment to their patients in the course of their practice from the requirement to be licensed as a home medical equipment provider.

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<sup>11</sup> Electrical Stimulation for the Treatment of Pain and Muscle Rehabilitation, United Healthcare Medical Policy, February 1, 2014, found at [https://www.unitedhealthcareonline.com/ccmcontent/ProviderII/UHC/en-US/Assets/ProviderStaticFiles/ProviderStaticFilesPdf/Tools%20and%20Resources/Policies%20and%20Protocols/Medical%20Policies/Medical%20Policies/Electrical\\_Stim\\_Tx\\_Pain\\_Muscle\\_Rehab.pdf](https://www.unitedhealthcareonline.com/ccmcontent/ProviderII/UHC/en-US/Assets/ProviderStaticFiles/ProviderStaticFilesPdf/Tools%20and%20Resources/Policies%20and%20Protocols/Medical%20Policies/Medical%20Policies/Electrical_Stim_Tx_Pain_Muscle_Rehab.pdf), page 3, last visited on Mar. 25, 2014.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Effectiveness of Transcutaneous Electrical Nerve Stimulation for Treatment of Hyperalgesia and Pain, *Curr Rheumatol Rep.* Dec 2008; 10(6): 492–499, found at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2746624/>, last visited on Mar. 25, 2014.

<sup>15</sup> *Id.*

<sup>16</sup> *Supra* n. 11

The bill establishes an effective date of July 1, 2014.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Any exempted physicians may see an indeterminate positive fiscal impact from CS/SB 1134 due to no longer having to pay licensure and inspection fees or meet the licensure requirements of part VII of ch. 400, F.S.

C. Government Sector Impact:

The AHCA may experience an indeterminate but likely insignificant negative fiscal impact due to fewer licensed home medical equipment providers.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 400.93 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Health Policy on March 25, 2014:**

The CS deletes language that would remove medical practices owned by a physician, or a physician and that physician's family member, from the definition of "home medical equipment provider" and instead exempts physicians who sell or rent electrostimulation medical equipment to their patients in the course of their practice from the licensure requirement for a home medical equipment provider.

- B. **Amendments:**

None.

By the Committee on Health Policy; and Senator Detert

588-03228-14

20141134c1

1                           A bill to be entitled  
2           An act relating to home medical equipment; amending  
3           section 400.93; exempting allopathic, osteopathic, and  
4           chiropractic physicians who sell or rent  
5           electrostimulation medical equipment and supplies to  
6           their patients in the course of their practice from  
7           licensure as home medical equipment providers;  
8           providing an effective date.

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

11  
12           Section 1. Paragraph (k) is added to subsection (5) of  
13           section 400.93, Florida Statutes, is to read:

14           400.93 Licensure required; exemptions; unlawful acts;  
15           penalties.-

16           (5) The following are exempt from home medical equipment  
17           provider licensure, unless they have a separate company,  
18           corporation, or division that is in the business of providing  
19           home medical equipment and services for sale or rent to  
20           consumers at their regular or temporary place of residence  
21           pursuant to the provisions of this part:

22           (k) Physicians licensed pursuant to chapter 458, chapter  
23           459, or chapter 460 for the sale or rental of electrostimulation  
24           medical equipment and electrostimulation medical equipment  
25           supplies to their patients in the course of their practice.

26           Section 2. This act shall take effect July 1, 2014.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

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BILL: CS/SB 1192

INTRODUCER: Health Policy Committee; and Senator Sobel and others

SUBJECT: Palliative Care

DATE: April 8, 2014

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION      |
|----|---------|----------------|-----------|-------------|
| 1. | Lloyd   | Stovall        | HP        | Fav/CS      |
| 2. | Brown   | Pigott         | AHS       | Pre-meeting |
| 3. |         |                | AP        |             |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1192 establishes the Florida Palliative Care and Quality of Life Interdisciplinary Advisory Council within the Department of Health (DOH). The bill describes the council's purpose, powers, duties and meeting requirements and authorizes the governor to appoint nine members from specific backgrounds or organizations.

The bill also creates the Palliative Care Consumer and Professional Information and Education Program within the DOH and directs the DOH to house information and links on its website. The bill directs specific health care practitioners and facilities to provide patients with information about palliative care or to comply with palliative care measures as ordered by the patient's provider.

The bill has an insignificant fiscal impact that may be absorbed within existing resources.

**II. Present Situation:**

According to the Center to Advance Palliative Care, palliative care can be defined as specialized medical care for people with serious illnesses that focuses on providing those patients with relief from the symptoms, pain, and stress of that illness with a goal of improving quality of life for both the patient and the patient's family.<sup>1</sup> Examples of serious illnesses helped by palliative care

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<sup>1</sup> Center to Advance Palliative Care, *Defining Palliative Care*, <http://www.capc.org/building-a-hospital-based-palliative-care-program/case/definingpc> (last visited Mar. 22, 2014).

include cancer, cardiac diseases, kidney failure, Alzheimer's disease, HIV/AIDS, and amyotrophic lateral sclerosis (ALS).

Palliative care focuses on helping patients get relief from symptoms caused by serious illnesses. Given alone when other treatment is not working or along with curative treatment, palliative care can be given from time of diagnosis until end of life.<sup>2</sup>

Access to palliative care in the United States has more than doubled in the last five years.<sup>3</sup> Ten years ago, there were almost no palliative care programs in America's hospitals. State by state calculations show that 62 percent of Florida's hospitals having 50 or more beds, provide a palliative care team.<sup>4</sup> Public opinion polls show that many Americans are not knowledgeable about palliative care; however, once explained, 92 percent reported they would be highly likely to consider palliative care for themselves or families if they had a serious illness.<sup>5</sup>

### **Palliative Care in Florida**

Under s. 765.102(5) and (6), F.S., the Legislature has recognized the need to establish end-of-life care standards, including pain management and palliative care. The DOH, the Agency for Health Care Administration (AHCA), and the Department of Elder Affairs (DOEA) are required to jointly develop an end-of-life care campaign. Under current law, the focus, however, is on planning for end-of-life care and includes assurances that:<sup>6</sup>

- Opportunities to discuss and plan for end-of-life care will be provided;
- Physical and mental suffering will be carefully attended to;
- Preferences for withholding and withdrawing life-sustaining interventions will be honored;
- The personal goals of the dying person will be addressed;
- The dignity of the dying person will be a priority;
- Health care providers will not abandon the dying person;
- The burden to family and others will be addressed;
- Advance directives for care will be respected regardless of the location of care;
- Organizational mechanisms are in place to evaluate the availability and quality of end-of-life, palliative, and hospice care services, including the evaluation of administrative and regulatory barriers;
- Necessary health care services will be provided and that relevant reimbursement policies are available; and,
- The goals will be accomplished in a culturally appropriate manner.

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<sup>2</sup> American Cancer Society, *Palliative or Supportive Care*,

<http://www.cancer.org/treatment/treatmentsandsideeffects/palliativecare/supportive-care> (last visited: Mar. 22, 2014).

<sup>3</sup> Center to Advance Palliative Care, *Executive Summary*, <http://www.capc.org/reportcard/summary> (last visited Mar. 22, 2014).

<sup>4</sup> Center to Advance Palliative Care, *State by State Report Card - Florida*, <http://www.capc.org/reportcard/home/FL/RC/Florida> (last visited: Mar. 22, 2014).

<sup>5</sup> American Cancer Society, *Palliative Care at a Glance*, <http://www.acscan.org/content/wp-content/uploads/2012/07/Palliative-Care-at-a-Glance.pdf> (last visited Mar. 22, 2014).

<sup>6</sup> s. 765.102(5)(b), F.S.



In 2013, the DOH's Cancer Program and Cancer Control and Research Advisory Council jointly sponsored a workshop and webinar on palliative care that included speakers from Florida and other national organizations.

The AHCA, the DOH, and the DOEA have web pages devoted to end-of-life resources with links to mostly external resources. In 2005, the DOEA published *Making Choices: A Guide to End of Life Planning* to address strategies for advance care planning.<sup>7</sup> The guide is available on the DOEA's website.

The AHCA is responsible for the licensing and regulation of facilities that provide palliative care, including hospitals, long-term care facilities, nursing homes, home health agencies, hospices, intermediate care facilities, prescribed pediatric care centers, and assisted living facilities under chs. 395, 400, and 429, F.S.

The DOH is responsible for the regulation of health care professions regulated under chs. 458, 486, and 464, F.S., which includes allopathic and osteopathic physicians, physician assistants, and levels of the nursing profession.

### **Statutory Creation of Advisory Bodies, Commissions, or Boards**

The statutory creation of any collegial body to serve as an adjunct to an executive agency is subject to certain provisions in s. 20.052, F.S. Such a body may only be created when it is found to be necessary and beneficial to the furtherance of a public purpose, and it must be terminated by the Legislature when it no longer fulfills such a purpose. The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of any collegial or advisory bodies.

Private citizen members of any advisory body (with exceptions for members of commissions or boards of trustees) may only be appointed by the governor, the head of the executive agency to which the advisory body is adjunct, the executive director of the agency, or a Cabinet officer. Private citizen members of a commission or a board of trustees may only be appointed by the governor, must be confirmed by the Senate, and are subject to the dual-office-holding prohibition of section 5(a) of Article II of the State Constitution.

Members of agency advisory bodies serve four-year staggered terms and are ineligible for any compensation other than travel expenses, unless expressly provided otherwise in the State Constitution. Unless an exemption is specified by law, all meetings are public, and records of minutes and votes must be maintained.

### **III. Effect of Proposed Changes:**

**Section 1** creates a non-statutory section of law and establishes the Palliative Care and Quality of Life Interdisciplinary Advisory Council (council). Definitions relating to the council and associated patient education program are also provided.

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<sup>7</sup> Department of Elder Affairs, *Making Choices: A Guide to End of Life Planning* (2005) <http://elderaffairs.state.fl.us/does/pubs/pubs/EOL.pdf> (last visited Mar. 24, 2014).

The advisory council, which is a council as defined under s. 20.03, F.S.,<sup>8</sup> is established within the DOH and consists of nine members. The governor is responsible for appointing five members and the appointments of the remaining four council members will be evenly split between the president of the Senate and the speaker of the House of Representatives. The primary purpose of the council is to consult with and advise the DOH on matters relating to palliative care initiatives in the state.

Council members are to include professionals with expertise in different aspects of palliative care, patient and family caregivers, or their advocates. The appointing officials, in consultation with the state surgeon general, are directed to ensure that the council's composition reflects a variety of experiences and representatives from different care settings, such as inpatient, outpatient, community, and hospice. At least one member appointed by the governor must be a representative of the American Cancer Society and at least two members, one each appointed by the president of the Senate and the speaker of the House of Representatives, must be board-certified hospital and palliative medicine physicians or nurses.

Council members' terms have a duration of four years, except that, to allow for staggered terms, the bill provides that the governor, president of the Senate, and the speaker of the House of Representatives shall each appoint one member to a two-year term and the governor shall appoint one member to a three-year term. All other initial and subsequent appointments shall be for four-year terms.

The bill directs the council to adopt organizational procedures and to elect a chair and vice chair, whose duties will be established by the council. Staff and assistance for the council will be provided by the DOH. Members will serve without compensation; however, they may be reimbursed for travel expenditures in accordance with s. 112.061, F.S. The council shall set regular meetings but is required to meet at least twice per year.

The bill directs the DOH to establish a palliative care consumer and professional information and education program. The DOH must also publish on its website information and resources about palliative care, including but not limited to, the following:

- Continuing education opportunities for health care practitioners;
- Palliative care delivery in the home and in primary, secondary and tertiary care settings;
- Best practices for palliative care delivery;
- Consumer educational materials; and,
- Referral information, including hospice.

The DOH is authorized to develop other initiatives regarding palliative care and education. In implementing the provisions of this bill, the DOH is directed to consult with the council.

**Section 2** provides the act shall become effective upon becoming law.

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<sup>8</sup> A "council" or "advisory council" under s. 20.03, F.S., means "an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives."

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Health care practitioners and their patients with serious illnesses may benefit from increased availability of information and resources on palliative care as generated by the council and the education program.

C. Government Sector Impact:

The DOH estimates the following state fiscal impact for costs associated with administrative support of the council, educational program, website, and travel reimbursement.<sup>9</sup> These costs may be absorbed within existing resources.

|  | <b>1st Year<br/>2014-2015</b> | <b>2nd Year<br/>Annualized\Recur</b> |
|--|-------------------------------|--------------------------------------|
| <b>Salaries</b>  |                               |                                      |
| 1- Part Time OPS Health Educator                               | \$13,963                      | \$13,963                             |
| OPS Benefits   | \$202                         | \$202                                |
| <b>Expense</b>   |                               |                                      |
| 1 - OPS Position   | \$15,602                      | \$11,829                             |
| <b>Council Travel Costs</b>                                    | \$9,000                       | \$9,000                              |
| <i>2 meetings per year/ 9 members</i>                          |                               |                                      |
| Human Resources Services<br><i>Calculated with OPS package</i> | \$120                         | \$120                                |
| <b>Total Estimated Expenditures:</b>                           | <b>\$38,887</b>               | <b>\$35,114</b>                      |

<sup>9</sup> Department of Health, 2014 Agency Legislative Bill Analysis - SB 1192, on file with the Senate Health Policy Committee (Feb. 25, 2014).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an undesignated section of Florida law.

**IX. Additional Information:**

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

**CS by Health Policy Committee on March 25, 2014:**

The CS adds physician assistants to the types of health care practitioners that may provide, request, or supervise the delivery of palliative care services.

The CS modifies the Palliative Care and Quality of Life Interdisciplinary Council to provide for staggered four-year terms and to include the president of the Senate and the speaker of the House of Representatives, in addition to the governor, as appointing officials for council members.

- B. **Amendments:**

None.



496766

LEGISLATIVE ACTION

Senate

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. .  
. .  
. .  
. .

House

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Appropriations Subcommittee on Health and Human Services  
(Gibson) recommended the following:

**Senate Amendment**

Delete line 62

and insert:

(b) The council shall consist of nine members who reflect  
the cultural diversity of this state, five

By the Committee on Health Policy; and Senators Sobel, Latvala,  
Soto, and Flores

588-03224-14

20141192c1

A bill to be entitled

An act relating to palliative care; defining terms; creating the Palliative Care and Quality of Life Interdisciplinary Advisory Council; specifying the purpose of the council; providing for membership on the council; providing for staggered terms; requiring the Department of Health to provide staff, information, and other assistance as necessary to the council; requiring the department to set regular meeting times for the council; requiring the council to adopt certain internal organizational procedures; authorizing reimbursement for certain expenses for council members; requiring the department to establish a palliative care consumer and professional information and education program; requiring the department to publish certain educational information and materials about palliative care on the department website; authorizing the department to develop and implement other services and education initiatives regarding palliative care; requiring the department to consult with the council to implement this act; providing an effective date.

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

Section 1. Palliative Care and Quality of Life Interdisciplinary Advisory Council; palliative care consumer and professional information and education program.

(1) DEFINITIONS.—As used in this section:

Page 1 of 5

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

588-03224-14

20141192c1

(a) “Appropriate” means consistent with applicable legal, health, and professional standards, the patient’s clinical and other circumstances, and the patient’s reasonably known wishes and beliefs.

(b) “Medical care” means services provided, requested, or supervised by a physician, a physician assistant, or an advanced registered nurse practitioner.

(c) “Palliative care” means patient- and family-centered medical care offered throughout the continuum of an illness which optimizes quality of life by anticipating, preventing, and treating suffering caused by serious illness. Palliative care involves addressing physical, emotional, social, and spiritual needs and facilitating patient autonomy, access to information, and choice. The term includes, but is not limited to, discussions of the patient’s goals for treatment; discussion of treatment options appropriate to the patient, including, if appropriate, hospice care; and comprehensive pain and symptom management.

(d) “Serious illness” means a medical illness or physical injury or condition that substantially impacts quality of life for more than a short period of time. The term includes, but is not limited to, cancer, renal or liver failure, heart or lung disease, and Alzheimer’s disease and related dementias.

(2) PALLIATIVE CARE AND QUALITY OF LIFE INTERDISCIPLINARY ADVISORY COUNCIL.—There is established within the Department of Health a Palliative Care and Quality of Life Interdisciplinary Advisory Council, which is an advisory council as defined in s. 20.03, Florida Statutes.

(a) The primary purpose of the council is to consult with

Page 2 of 5

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

588-03224-14

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59 and advise the department on matters relating to the  
60 establishment, maintenance, operation, and outcome evaluation of  
61 palliative care initiatives in this state.

62 (b) The council shall consist of nine members, five  
63 appointed by the Governor, two appointed by the President of the  
64 Senate, and two appointed by the Speaker of the House of  
65 Representatives. The council shall include professionals who  
66 have expertise in various aspects of palliative care, including,  
67 but not limited to, interdisciplinary palliative care, medical,  
68 nursing, social work, pharmacy, and spiritual expertise; patient  
69 and family caregivers or their advocates. The appointing  
70 officials, in consultation with the Surgeon General, shall  
71 ensure that representation on the council reflects a broad  
72 perspective of palliative care in a variety of inpatient,  
73 outpatient, and community settings, such as acute care, long-  
74 term care, and hospice, and with a variety of populations,  
75 including pediatric, youth, and adult. One council member  
76 appointed by the Governor shall be a designee of the American  
77 Cancer Society. At least two council members, one each appointed  
78 by the President of the Senate and Speaker of the House of  
79 Representatives, shall be board-certified hospice and palliative  
80 medicine physicians, physician assistants, or nurses. Members  
81 shall serve four-year terms, except that, initially to provide  
82 for staggered terms, the Governor, the President of the Senate,  
83 and the Speaker of the House of Representatives shall each  
84 appoint one member to serve a two-year term, and the Governor  
85 shall appoint at least one member to serve a three-year term.  
86 All other initial appointments and any subsequent appointments  
87 shall be for four-year terms.

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

588-03224-14

20141192c1

88 (c) The council shall adopt internal organizational  
89 procedures as necessary for its efficient organization which  
90 must, at a minimum, require the council to elect a chair and  
91 vice chair whose duties shall be established by the council.

92 (d) The department shall provide such staff, information,  
93 and other assistance as is reasonably necessary to assist the  
94 council in carrying out its responsibilities.

95 (e) Members of the council shall serve without  
96 compensation, but may receive reimbursement as provided in s.  
97 112.061, Florida Statutes, for travel and other necessary  
98 expenses incurred in the performance of their official duties.

99 (f) The department shall fix a time and place for regular  
100 meetings of the council, which shall meet at least twice a year.

101 (3) PALLIATIVE CARE CONSUMER AND PROFESSIONAL INFORMATION  
102 AND EDUCATION PROGRAM.—

103 (a) The department shall establish a palliative care  
104 consumer and professional information and education program. The  
105 purpose of the program is to maximize the effectiveness of  
106 palliative care initiatives in this state by making  
107 comprehensive and accurate information and education about  
108 palliative care available to the public, health care  
109 practitioners, and health care facilities.

110 (b) The department shall publish on its website information  
111 and resources, including links to external resources, about  
112 palliative care, which shall include, but not be limited to,  
113 continuing education opportunities for health care  
114 practitioners, information about palliative care delivery in the  
115 home and in primary, secondary, and tertiary care settings, best  
116 practices for palliative care delivery, and consumer educational

Page 4 of 5

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

588-03224-14

20141192c1

117 materials and referral information for palliative care,  
118 including hospice.

119 (c) The department may develop and implement other  
120 initiatives regarding palliative care services and education to  
121 further the purposes of this section.

122 (d) The department shall consult with the Palliative Care  
123 and Quality of Life Interdisciplinary Advisory Council in  
124 implementing this subsection.

125 Section 2. This act shall take effect upon becoming a law.





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Children, Families, and Elder Affairs, *Chair*  
Ethics and Elections, *Vice Chair*  
Health Policy, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Regulated Industries  
Rules

### SELECT COMMITTEE:

Select Committee on Patient Protection  
and Affordable Care Act, *Vice Chair*

### SENATOR ELEANOR SOBEL

33rd District

March 26, 2014

Senator Denise Grimsley, Chair  
Appropriations Subcommittee on Health and Human Services  
306 Senate Office Building  
404 South Monroe Street  
Tallahassee, Florida 32399

Dear Chair Grimsley:

This letter is to request that SB 1192 relating to Palliative Care be placed on the agenda of the next scheduled meeting of the committee.

The proposed legislation would create a Palliative Care and Quality of Life Interdisciplinary Advisory Council. It would also require the department to establish a palliative care consumer and professional information and education program. Palliative Care is about treating the whole patient, not just the disease; it has proven results in increasing quality of life, length of life, and decreasing costs of care.

Thank you for your consideration of this request.

Respectfully,

A handwritten signature in cursive script that reads "Eleanor Sobel".

Eleanor Sobel  
State Senator, 33rd District

Cc: Robin Auber, Scarlet Pigott

#### REPLY TO:

- The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

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BILL: CS/SB 1084

INTRODUCER: Appropriations Subcommittee on Health and Human Services and Criminal Justice Committee

SUBJECT: Public Assistance Fraud

DATE: April 11, 2014

REVISED: \_\_\_\_\_

|    | ANALYST       | STAFF DIRECTOR | REFERENCE  | ACTION                           |
|----|---------------|----------------|------------|----------------------------------|
|    | <u>Cellon</u> | <u>Cannon</u>  |            | <b>CJ SPB 7044 as Introduced</b> |
| 1. | <u>Brown</u>  | <u>Pigott</u>  | <u>AHS</u> | <b>Fav/CS</b>                    |
| 2. | _____         | _____          | <u>AP</u>  | _____                            |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1084 amends s. 414.39(5), F.S., to set an upper limit on the value of public assistance fraud that is punishable as a third degree felony and to create new felony crimes, a first degree felony and a second degree felony, based upon graduated, increasing dollar values.

Subsection 414.39(11), F.S., is created to provide for a reward program that will pay persons for information that relates to criminal public assistance fraud and that leads to the recovery of a fine, penalty, or forfeiture of property.

The bill creates restrictions relating to the temporary cash assistance (TCA) program administered by the Department of Children and Families (DCF). The bill limits the use of TCA out of state to thirty consecutive days. The bill also requires that a protective payee<sup>1</sup> be designated to receive TCA on behalf of an eligible child where a parent or caretaker relative has become ineligible due to fraud.

For Fiscal Year 2014-2015, the bill appropriates \$171,604 of recurring funds and \$4,736 of nonrecurring funds from the General Revenue Fund, \$171,605 of recurring funds and \$4,737 of nonrecurring funds from the Federal Grants Trust Fund, and one full-time equivalent (FTE) position to the DCF, and \$214,135 of recurring funds and \$17,785 of nonrecurring funds from

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<sup>1</sup> Section 414.065(2)(b), F.S.

the Insurance Regulatory Trust Fund and five FTE positions to the Department of Financial Services, to implement the bill.

## II. Present Situation:

### Public Assistance Fraud

“Public assistance” refers to benefits paid on the basis of the temporary cash assistance, food assistance, Medicaid, or optional state supplementation program.<sup>2</sup> Section 414.39, F.S., establishes the following crimes involving public assistance fraud, which are investigated by the Division of Public Assistance Fraud within the Department of Financial Services (DFS).<sup>3</sup>

Section 414.39(1), F.S., provides that a person commits a crime if they:

- Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose a material fact used in making a determination as to such person’s qualification to receive public assistance under any state or federally funded assistance program;
- Fail to disclose a change in circumstances in order to obtain or continue to receive any such public assistance to which he or she is not entitled or in an amount larger than that to which he or she is entitled; or
- Aid and abet another person in the commission of any such act.

Section 414.39(2), F.S., provides that a person commits a crime if they:

- Use, transfer, acquire, traffic, alter, forge, or possess;
- Attempt to use, transfer, acquire, traffic, alter, forge, or possess; or
- Aid and abet another person in the use, transfer, acquisition, traffic, alteration, forgery, or possession of, a food assistance identification card, an authorization, including, but not limited to, an electronic authorization, for the expenditure of food assistance benefits, a certificate of eligibility for medical services, or a Medicaid identification card in any manner not authorized by law.

Section 414.39(3), F.S., specifies that any person having duties in the administration of a state or federally funded public assistance program or in the distribution of public assistance, or authorizations or identifications to obtain public assistance, under a state or federally funded public assistance program, commits a crime if they:

- Fraudulently misappropriate, attempt to misappropriate, or aid and abet in the misappropriation of, food assistance, an authorization for food assistance, a food assistance identification card, a certificate of eligibility for prescribed medicine, a Medicaid identification card, or public assistance from any other state or federally funded program with which he or she has been entrusted or of which he or she has gained possession by virtue of his or her position, or if they knowingly fail to disclose any such fraudulent activity; or
- Knowingly misappropriate, attempt to misappropriate, or aid or abet in the misappropriation of, funds given in exchange for food assistance program benefits or for any form of food assistance benefits authorization.

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<sup>2</sup> Section 414.0252(10), F.S.

<sup>3</sup> Section 414.411, F.S.

Section 414.39(4), F.S., provides that a person commits a crime if they:

- Knowingly file, attempt to file, or aid and abet in the filing of, a claim for services to a recipient of public assistance under any state or federally funded public assistance program for services that were not rendered; knowingly files a false claim or a claim for non-authorized items or services under such a program; or if they knowingly bill the recipient of public assistance under such a program, or his or her family, for an amount in excess of that provided for by law or regulation;
- Knowingly fail to credit the state or its agent for payments received from social security, insurance, or other sources; or
- In any way knowingly receive, attempt to receive, or aid and abet in the receipt of, unauthorized payment or other unauthorized public assistance or authorization or identification to obtain public assistance as provided herein.

Section 414.39(5), F.S., establishes criminal penalties that apply to all of the above-described offenses. The criminal penalties are based on the value of the public assistance involved in the offense. Currently, s. 414.39(5), F.S., provides:

- (a) If the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is less than an aggregate value of \$200 in any 12 consecutive months, such person commits a first degree misdemeanor;<sup>4</sup> or
- (b) If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more in any 12 consecutive months, such person commits a third degree felony.<sup>5</sup>

### **Temporary Cash Assistance**

Temporary cash assistance” (TCA) is defined as cash assistance certified under Title IV-A of the Social Security Act, as amended.<sup>6</sup> The DCF administers Florida’s TCA Program, which provides cash assistance to families with children under the age of 18 or under age 19 if full-time high school students, that meet specified technical, income, and asset requirements.<sup>7</sup>

Section 414.095, F.S., establishes the technical, income, and asset requirements that must be met before becoming eligible to receive TCA benefits;<sup>8</sup> sets forth criteria for determining how much TCA a person is entitled to receive; and establishes how TCA may be calculated and paid. The statute also contains a multitude of prohibitions and restrictions. For example:

- A family without a minor child living in the home is not eligible to receive TCA. However, a pregnant woman is eligible for TCA in the ninth month of pregnancy if all eligibility requirements are otherwise satisfied;
- An individual is ineligible to receive TCA during any period when the individual is fleeing to avoid prosecution, custody, or confinement after committing a crime, attempting to commit a crime that is a felony under the laws of the place from which the individual flees or a high

<sup>4</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>5</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>6</sup> Section 414.0252(12), F.S.

<sup>7</sup> <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/temporary-cash-assistance-tca> (last visited on January 29, 2014).

<sup>8</sup> DCF determines if the families meet such requirements. Section 414.095(1), F.S.

misdemeanor in the State of New Jersey, or violating a condition of probation or parole imposed under federal or state law; and

- The parent or other caretaker relative must report to the DCF by the end of the five-day period that begins on the date it becomes clear to the parent or caretaker relative that a minor child will be absent from the home for 30 or more consecutive days. A parent or caretaker relative who fails to report this information to the DCF is disqualified from receiving TCA for 30 days for the first occurrence, 60 days for the second occurrence, and 90 days for the third or subsequent occurrence.<sup>9</sup>

### III. Effect of Proposed Changes:

The bill amends the aggregate value amount in s. 414.39(5)(b), F.S., to make it a third degree felony if the value of the public assistance fraud or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more *but less than \$20,000* in any 12 consecutive months.

The bill creates s. 414.39(5)(c) and (d), F.S., which:

- (c) Makes it a second degree felony<sup>10</sup> if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of *\$20,000 or more, but less than \$100,000* in any 12 consecutive months.
- (d) Makes it a first degree felony<sup>11</sup> if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of *\$100,000 or more* in any 12 consecutive months.

The bill requires the DCF or the director of the DCF's Office of Public Benefits Integrity, to pay a reward to a person who furnishes and reports original information relating to a violation of the state's public assistance fraud laws, unless the person declines the reward. The information and report must:

- Be made to the DCF, the DFS, or the Florida Department of Law Enforcement;
- Relate to criminal fraud upon public assistance program funds or a criminal violation of public assistance fraud laws by another person; and
- Lead to the recovery of a fine, penalty, or forfeiture of property.

The reward requirement is subject to availability of funds and may not exceed 10 percent of the amount recovered or \$500,000, whichever is less, in a single case. The reward must be paid from the state share of the recovery in the Federal Grants Trust Fund from moneys collected pursuant to s. 414.41, F.S.<sup>12</sup> The bill specifies that a person who receives a reward is not eligible to

<sup>9</sup> Section 414.095(14), F.S.

<sup>10</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>11</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>12</sup> Section 414.41, F.S., requires DCF to take all necessary steps to recover overpayment whenever it becomes apparent that any person or provider has received any public assistance to which she or he is not entitled, through either simple mistake or fraud on the part of DCF or on the part of the recipient or participant.

receive funds pursuant to the Florida False Claims Act for Medicaid fraud for which the reward was received.<sup>13</sup>

The bill amends s. 414.095(14), F.S., to add two additional prohibitions and restrictions:

- The first limits the out-of-state use of TCA benefits to 30 consecutive days and requires termination of the TCA benefits if used out-of-state for more than 30 days. The bill directs the DCF to adopt rules providing for the determination of temporary absence and a recipient's intent to return to the state.
- The second requires a parent or caretaker relative who has been disqualified due to fraud to have a protective payee designated to receive the TCA benefits for an eligible child. The requirements for designation of a protective payee are the same as provided in s. 414.065(2)(b), F.S.<sup>14</sup> The bill specifies that an individual disqualified for fraud cannot be designated as a protective payee and, in a two-parent household, if only one parent is disqualified, the other parent may be designated as the payee of the benefit.

The bill provides for the following appropriations for Fiscal Year 2014-2015 to implement the cash rewards provisions of the bill:

- \$171,604 of recurring funds and \$4,736 of nonrecurring funds, from the General Revenue Fund, \$171,605 of recurring funds and \$4,737 of nonrecurring funds, from the Federal Grants Trust Fund, and one FTE position to the DCF; and
- \$214,135 of recurring funds and \$17,785 of nonrecurring funds, from the Insurance Regulatory Trust Fund, and five FTE positions to the DFS.

The bill becomes effective October 1, 2014.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

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<sup>13</sup> Under Florida's False Claims Act (ss. 68.081-68.092, F.S.), people who report Medicaid Fraud are entitled to share in any funds recovered by the state. <http://myfloridalegal.com/pages.nsf/Main/ebc480598bbf32d885256cc6005b54d1> (last visited on January 29, 2014). See s. 68.085(3), F.S.

<sup>14</sup> Section 414.065, F.S., requires all TCA applicants to register for work and engage in work activities in accordance with s. 445.024, F.S. Those who do not comply with the work requirements are subject to penalties. Upon the second or third occurrence of noncompliance, TCA for a child or children in a family who are under age 16 may be continued. However, any payments must be made through a protective payee. Protective payees must be designated by DCF and may include:

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children;
- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children; or
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and to utilize the assistance in the best interest of the child or children.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

*Department of Children and Families*<sup>15</sup>

The Department of Children and Families (DCF) indicated that:

- An indeterminate amount of additional revenues may be received due to the bill’s reward provisions.
- Reducing annual temporary cash assistance expenditures by terminating the benefits received by recipients no longer residing in the state of Florida, may result in an estimated annual savings of \$1.8 million (based on repeated out-of-state use and averages).
- Funding for rewards will be taken from moneys collected pursuant to s. 414.41, F.S., in the Federal Grants Trust Fund, which is a significant source of funding for DCF’s Public Benefit Integrity (PBI) program. Reduction of these funds may cause the need for an indeterminate amount of additional funding for the PBI operation.
- Additional staff would be needed to receive and investigate the tips and complaints received through the reward program. The Florida Office of the Attorney General experienced a 286-percent increase in calls relating to Medicaid Fraud when it initiated a reward program in the first year. The DCF’s PBI currently receives an average of 26,400 online and telephonic fraud reports annually and projects an additional seven full-time equivalent (FTE) positions are needed to process the increase in complaint volume, investigative leads, and oversee the administration of the program.

|  |        |
|--|--------|
| Current call/ complaint volume                               | 26,400 |
| Additional anticipated volume (286% increase)                | 75,504 |
| Minutes to log and process each complaint                    | 8      |
| Hours of additional workload                                 | 10,067 |
| Contract staff to handle workload (10,067 / 2000 hrs per yr) | 5.03   |

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<sup>15</sup> The following fiscal information was provided by the Department of Children and Families on January 14, 2014, in the Department’s Bill Analysis of identical House Bill 515. A copy of the Analysis is on file with the Senate Criminal Justice Committee.

|  |                  |
|--|------------------|
| Current hourly cost for Financial Specialist (contractor)                    | \$16.10          |
| Expected additional cost (\$16.10 * 2000 hrs * 5)                            | \$161,000        |
| Additional DCF Staffing Need   |                  |
| 1 FTE: Rewards Program Manager (OMC I – SES)                                 |                  |
| 1 OPS ACCESS Integrity Investigator (ESS II)                                 |                  |
| Salaries and Benefits  | \$48,003         |
| Other Personnel Services   | \$35,601         |
| Nonrecurring Expenses (furniture for FTE, Equipment for OPS & Contract staff | \$9,473          |
| Recurring Expenses (Rent, Supplies, telephone, postage)                      | \$9,761          |
| Technology (Software Programming)  | \$85,000         |
| Contracted Services (6 Financial Specialists)                                | \$161,000        |
| DMS-Human Resources Services Surcharge                                       | \$344            |
| <b>Total</b>   | <b>\$349,182</b> |

Estimates are based on the assumption that the bill's reward program would result in an increase in workload similar to the increase experienced when the Attorney General's Office reward program was implemented. The actual impact may deviate from this amount.

The bill appropriates \$171,604 of recurring funds and \$4,736 of nonrecurring funds from the General Revenue Fund, \$171,605 of recurring funds and \$4,737 of nonrecurring funds from the Federal Grants Trust Fund, and one FTE position to the DCF to implement the cash rewards provisions of the bill in Fiscal Year 2014-2015.

### *Department of Financial Services<sup>16</sup>*

The Department of Financial Services (DFS) indicated that:

- The state may experience a positive fiscal impact through increased numbers of violations reported that generate a repayment to the state. The state retains between 20 percent and 35 percent of recoveries.
- Implementation of the cash reward process under the bill will generate a significant increase in the number of complaints received. Given current staffing in the DFS's Division of Public Assistance Fraud (Division) and the lack of sufficient administrative support positions, additional personnel resources are needed, along with dedicated telephone lines. The increased number of calls reporting possible fraud cannot be absorbed by existing resources without a significant negative impact on the performance of the Division.
- The DFS estimates the need for additional funding of:
  - \$122,874 for five administrative support OPS positions;

<sup>16</sup> The following fiscal information was provided by the Department of Financial Services on February 3, 2014, in the Department's Bill Analysis of identical House Bill 515. A copy of the Analysis is on file with the Senate Criminal Justice Committee.



- \$17,280 for office space; and
- A nonrecurring \$9,000 for office furniture and computer equipment for five OPS employees.

The bill appropriates \$214,435 of recurring funds and \$17,785 of nonrecurring funds from the Insurance Regulatory Trust Fund and five FTE positions to the DFS to implement the cash reward provisions of the bill in Fiscal Year 2014-2015.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 414.095 and 414.39.

**IX. Additional Information:**

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

**CS by Appropriations Subcommittee on Health and Human Services on April 9, 2014:**

The CS appropriates, for Fiscal Year 2014-2015, a recurring sum of \$171,604 from general revenue, a nonrecurring sum of \$4,736 from general revenue, a recurring sum of \$385,740 from trust funds, and a nonrecurring sum of \$22,522 from trust funds to fund the cash rewards provisions in the bill.

- B. **Amendments:**

None.



439384

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 04/09/2014 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

---

Appropriations Subcommittee on Health and Human Services  
(Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 171 and 172  
insert:

Section 3. For the 2014-2015 fiscal year, the sums of \$171,604 in recurring funds and \$4,736 in nonrecurring funds from the General Revenue Fund and \$171,605 in recurring funds and \$4,737 in nonrecurring funds from the Federal Grants Trust Fund are appropriated to the Department of Children and Families, and one full-time equivalent position with associated



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11 salary rate of 32,698 is authorized, for the purpose of  
12 implementing the cash rewards process provisions of this act.

13 Section 4. For the 2014-2015 fiscal year, the sums of  
14 \$214,135 in recurring funds and \$17,785 in nonrecurring funds  
15 are appropriated from the Insurance Regulatory Trust Fund to the  
16 Department of Financial Services, and five full-time equivalent  
17 positions with associated salary rate of 114,040 are authorized,  
18 for the purpose of implementing the cash rewards process  
19 provisions of this act.

20  
21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Delete line 18

24 and insert:

25 protective payees; providing appropriations and  
26 authorizing positions; providing an effective date.

By the Committee on Criminal Justice

591-01847-14

20141084\_\_

1 A bill to be entitled  
 2 An act relating to public assistance fraud; amending  
 3 s. 414.39, F.S.; providing enhanced criminal penalties  
 4 if the value of public assistance or identification  
 5 wrongfully received, retained, misappropriated,  
 6 sought, or used is of an aggregate value exceeding  
 7 specified amounts; providing for a reward for a report  
 8 of original information relating to a violation of the  
 9 state's public assistance fraud laws if the  
 10 information and report meet specified requirements;  
 11 amending s. 414.095, F.S.; limiting to a specified  
 12 period the use of temporary cash assistance benefits  
 13 out of state; requiring rulemaking; requiring that a  
 14 parent or caretaker relative who has been disqualified  
 15 due to fraud have a protective payee designated to  
 16 receive temporary cash assistance benefits for  
 17 eligible children; providing requirements for  
 18 protective payees; providing an effective date.  
 19  
 20 Be It Enacted by the Legislature of the State of Florida:  
 21  
 22 Section 1. Subsections (1) through (5) of section 414.39,  
 23 Florida Statutes, are amended, and subsection (11) is added to  
 24 that section, to read:  
 25 414.39 Fraud.—  
 26 (1) Any person who knowingly:  
 27 (a) Fails, by false statement, misrepresentation,  
 28 impersonation, or other fraudulent means, to disclose a material  
 29 fact used in making a determination as to such person's

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

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20141084\_\_

30 qualification to receive public assistance under any state or  
 31 federally funded assistance program;  
 32 (b) Fails to disclose a change in circumstances in order to  
 33 obtain or continue to receive any such public assistance to  
 34 which he or she is not entitled or in an amount larger than that  
 35 to which he or she is entitled; or  
 36 (c) Aids and abets another person in the commission of any  
 37 such act,  
 38  
 39 commits ~~is guilty of~~ a crime and shall be punished as provided  
 40 in subsection (5).  
 41 (2) Any person who knowingly:  
 42 (a) Uses, transfers, acquires, traffics, alters, forges, or  
 43 possesses; ~~or~~  
 44 (b) Attempts to use, transfer, acquire, traffic, alter,  
 45 forge, or possess; ~~or~~  
 46 (c) Aids and abets another person in the use, transfer,  
 47 acquisition, traffic, alteration, forgery, or possession of,  
 48  
 49 a food assistance identification card, an authorization,  
 50 including, but not limited to, an electronic authorization, for  
 51 the expenditure of food assistance benefits, a certificate of  
 52 eligibility for medical services, or a Medicaid identification  
 53 card in any manner not authorized by law commits a crime and  
 54 shall be punished as provided in subsection (5).  
 55 (3) Any person having duties in the administration of a  
 56 state or federally funded public assistance program or in the  
 57 distribution of public assistance, or authorizations or  
 58 identifications to obtain public assistance, under a state or

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

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federally funded public assistance program and who:

(a) Fraudulently misappropriates, attempts to misappropriate, or aids and abets in the misappropriation of, food assistance, an authorization for food assistance, a food assistance identification card, a certificate of eligibility for prescribed medicine, a Medicaid identification card, or public assistance from any other state or federally funded program with which he or she has been entrusted or of which he or she has gained possession by virtue of his or her position, or who knowingly fails to disclose any such fraudulent activity; or

(b) Knowingly misappropriates, attempts to misappropriate, or aids or abets in the misappropriation of, funds given in exchange for food assistance program benefits or for any form of food assistance benefits authorization,

~~commits is guilty of~~ a crime and shall be punished as provided in subsection (5).

(4) Any person who:

(a) Knowingly files, attempts to file, or aids and abets in the filing of, a claim for services to a recipient of public assistance under any state or federally funded public assistance program for services that were not rendered; knowingly files a false claim or a claim for nonauthorized items or services under such a program; or knowingly bills the recipient of public assistance under such a program, or his or her family, for an amount in excess of that provided for by law or regulation;

(b) Knowingly fails to credit the state or its agent for payments received from social security, insurance, or other sources; or

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20141084\_\_

(c) In any way knowingly receives, attempts to receive, or aids and abets in the receipt of, unauthorized payment or other unauthorized public assistance or authorization or identification to obtain public assistance as provided herein,

~~commits is guilty of~~ a crime and shall be punished as provided in subsection (5).

(5) (a) If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is less than an aggregate value of \$200 in any 12 consecutive months, such person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more, but less than \$20,000 in any 12 consecutive months, such person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$20,000 or more, but less than \$100,000 in any 12 consecutive months, such person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$100,000 or more in any 12 consecutive months, such person commits a felony of the first

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117 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 118 775.084.

119 (e)(e) As used in this subsection, the value of a food  
 120 assistance authorization benefit is the cash or exchange value  
 121 unlawfully obtained by the fraudulent act committed in violation  
 122 of this section.

123 (f)(d) As used in this section, "fraud" includes the  
 124 introduction of fraudulent records into a computer system, the  
 125 unauthorized use of computer facilities, the intentional or  
 126 deliberate alteration or destruction of computerized information  
 127 or files, and the stealing of financial instruments, data, and  
 128 other assets.

129 (11) (a) Subject to availability of funds, the department or  
 130 the director of the Office of Public Benefits Integrity shall,  
 131 unless the person declines the reward, pay a reward to a person  
 132 who furnishes and reports original information relating to a  
 133 violation of the state's public assistance fraud laws if the  
 134 information and report:

135 1. Are made to the department, the Department of Financial  
 136 Services, or the Department of Law Enforcement.

137 2. Relate to criminal fraud upon public assistance program  
 138 funds or a criminal violation of public assistance fraud laws by  
 139 another person.

140 3. Lead to the recovery of a fine, penalty, or forfeiture  
 141 of property.

142 (b) The reward may not exceed 10 percent of the amount  
 143 recovered or \$500,000, whichever is less, in a single case.

144 (c) The reward shall be paid from the state share of the  
 145 recovery in the Federal Grants Trust Fund from moneys collected

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146 pursuant to s. 414.41.

147 (d) A person who receives a reward pursuant to this  
 148 subsection is not eligible to receive funds pursuant to the  
 149 Florida False Claims Act for Medicaid fraud for which the reward  
 150 was received.

151 Section 2. Paragraphs (k) and (l) are added to subsection  
 152 (14) of section 414.095, Florida Statutes, to read:

153 414.095 Determining eligibility for temporary cash  
 154 assistance.—

155 (14) PROHIBITIONS AND RESTRICTIONS.—

156 (k) Use of temporary cash assistance benefits out of state  
 157 is limited to 30 consecutive days. The temporary cash assistance  
 158 benefits of a recipient using his or her benefits out-of-state  
 159 for more than 30 days shall be terminated. The department shall  
 160 adopt rules providing for the determination of temporary absence  
 161 and a recipient's intent to return to the state.

162 (l) A parent or caretaker relative who has been  
 163 disqualified due to fraud must have a protective payee  
 164 designated to receive temporary cash assistance benefits for an  
 165 eligible child. The requirements for designation of a protective  
 166 payee shall be the same as the requirements for designation of a  
 167 protective payee for work sanctions in s. 414.065(2) (b). An  
 168 individual disqualified for fraud cannot be designated as a  
 169 protective payee. In a two-parent household, if only one parent  
 170 is disqualified, the other parent may be designated as the payee  
 171 of the benefit.

172 Section 3. This act shall take effect October 1, 2014.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Criminal Justice, *Chair*  
Appropriations Subcommittee on Finance and Tax  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Communications, Energy, and Public Utilities  
Military and Veterans Affairs, Space, and  
Domestic Security  
Transportation

## JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

## SENATOR GREG EVERS

2nd District

February 21, 2014

Honorable Denise Grimsley  
Senate Appropriations Subcommittee on Health and Human Services  
306 SB  
404 S. Monroe St.  
Tallahassee, FL 32399

### RE: SB 1084

Dear Chairman Grimsley:

Please allow this letter to serve as my respectful request to include SB 1084 regarding Public Assistance Fraud on the agenda for your next Appropriations Subcommittee on Health and Human Services meeting.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Greg Evers".

Greg Evers  
State Senator, District 2

#### REPLY TO:

- 209 East Zaragoza Street, Pensacola, Florida 32502-6048 (850) 595-0213 FAX: (888) 263-0013
- 308 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

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BILL: CS/SB 508

INTRODUCER: Children, Families, and Elder Affairs Committee; and Senator Detert

SUBJECT: State Ombudsman Program

DATE: April 8, 2014

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Crosier | Hendon         | CF        | <b>Fav/CS</b>    |
| 2. | Brown   | Pigott         | AHS       | <b>Favorable</b> |
| 3. |         |                | AP        |                  |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 508 revises the operating structure and internal procedures of the State Long-Term Care Ombudsman Program (LTCOP), housed in the Department of Elder Affairs (DOEA), to reflect current practices, maximize operational and program efficiencies, and conform to the federal Older Americans Act. The bill revises the appointment process for three at-large positions to the State Long-Term Care Council whereby the appointments will no longer be made by the governor but will be made by the secretary of the DOEA.

The bill has no fiscal impact.

**II. Present Situation:**

**Older Americans Act**

The Older Americans Act (OAA) was enacted in 1965 to assist elders to lead independent, meaningful, and dignified lives in their own communities rather than in more costly residential or nursing home settings.<sup>1</sup> The OAA programs are administered through area agencies on aging under the Department of Elder Affairs (DOEA). To be eligible for OAA programs, individuals must be 60 years of age or older. Spouses and disabled adults younger than 60 years of age may receive services in certain circumstances. Preference is given to elders with the greatest

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<sup>1</sup> Government Program Summaries, Office of Program Policy Analysis and Governmental Accountability website, available at <http://www.oppga.state.fl.us/profiles/5032/> (last visited March 28, 2014).



economic or social needs, particularly low-income minority individuals. The OAA was most recently reauthorized in 2006 to supply funding for several nutritional programs and in-home and supportive services for elders.

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

### **Long-Term Care Ombudsman Program**

In Florida, a long-term care ombudsman is a volunteer who helps improve the lives of people who live in long-term care settings like nursing homes, assisted living facilities, and adult family care homes by investigating and resolving their complaints against the facility. The LTCOP comprises more than 300 volunteers who are advocates for the residents to improve their quality of life.

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

The LTCOP has no enforcement and regulatory oversight authority for long-term care facilities. The Agency for Health Care Administration (AHCA) has the responsibility for licensing long-term care facilities. An ombudsman, after completing specified statutory requirements, is certified as an independent advocate, working solely on behalf of residents to mediate disputes between residents and long-term care facilities on an informal basis. The LTCOP provides residents with the opportunity to develop personal and confidential relationships with ombudsmen to create an environment that allows a resident to candidly voice complaints. If a complaint is verified by the ombudsman that could violate the facility's licensure or be criminal activity, the LTCOP refers the issue to the AHCA, Adult Protective Services within the Department of Children and Families (DCF), the Attorney General's Office, or other agencies as appropriate.<sup>3</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 400.0060, F.S., to revise and create definitions of terms used in the ombudsman statute. Definitions for "long-term care facility," and "ombudsman" are updated. The term "representative of the office" is defined to include the state ombudsman, employees,

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<sup>2</sup> Department of Elder Affairs, Florida's Long-Term Care Ombudsman Program website, *available at* <http://ombudsman.myflorida.com/index.php> (last visited March 28, 2014).

<sup>3</sup> Department of Elder Affairs, *Senate Bill 508 Fiscal Analysis* (Dec. 31, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

and certified ombudsman. The term “state ombudsman” is defined as the person appointed by the secretary of the DOEA to administer the ombudsman program. The term “resident” is revised to include persons over 18 years of age who reside in a long-term care facility. The term “district” creates geographical areas in the state designated by the state ombudsman and each district may have more than one local unit of ombudsmen.

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

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

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

**Section 5** amends s. 400.0067, F.S., relating to the State Long-Term Care Ombudsman Council, to update terminology. Currently, appointments to the three at-large positions to the council are made by the governor. Under the bill, the district manager, in consultation with the district ombudsmen, will select a district ombudsman as a representative to the council. The state ombudsman will submit the names to the secretary of the DOEA, who will make the appointment to the three at-large positions on the state council.

**Section 6** amends 400.0069, F.S., relating to the local ombudsman councils. The councils are renamed as districts and are designated by the state ombudsman. The bill provides for development of family councils within facilities; clarifies that ombudsmen may be allowed to serve in a different district for good cause shown; and clarifies the application, background screening, and training requirements needed to become a certified ombudsman. The bill also requires that each district must convene a public meeting every quarter. The bill provides that ombudsmen identify, investigate, and resolve complaints made by or on behalf of residents relating to actions or omissions by providers of long-term care services, other public agencies, guardians, or representative payees which may adversely affect the health, safety, welfare, or rights of a resident.

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

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

**Section 9** amends s. 400.0073, F.S., relating to complaint investigations, access to long-term care facilities by ombudsmen, reporting procedures in the event access is denied and conforms to newly-defined terms.

**Section 10** amends s. 400.0074, F.S., to provide an on-site administrative assessment at least annually that must be resident-centered and focus on the rights, health, safety, and welfare of the residents. The assessment may not impose an unreasonable burden on the long-term care facility. The bill adds the rulemaking authority and conforms to newly-defined terms.

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

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

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

**Section 14** amends s. 400.0081, F.S., relating to ombudsman access to long-term care facilities, including access to medical and social records of a resident as necessary to resolve a complaint. The bill also deletes the limitation that ombudsmen have access to residents only for investigating a complaint.

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

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

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

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

**Sections 19 through 44** amend ss. 20.41, 400.021, 400.022, 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23, 400.235, 415.102, 415.1034, 415.104, 415.1055, 415.106, 145.107, 429.02, 429.07, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, 429.85, 744.444, F.S., to conform to newly-defined terms and to make technical changes.

**Section 45** provides an effective date of July 1, 2014.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.41, 400.0060, 400.0061, 400.0063, 400.0065, 400.0067, 400.0069, 400.0070, 400.0071, 400.0073, 400.0074, 400.0075, 400.0078, 400.0079, 400.0081, 400.0083, 400.0087, 400.0089, 400.0091, 400.021, 400.022, 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23, 400.235, 415.102, 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.07, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, 429.85, and 744.444.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Children, Families, and Elder Affairs on April 1, 2014:**

The CS contains the following provisions:

- Defines the term “district” as a geographical area designated by the state ombudsman in which ombudsmen carry out of the duties of the state ombudsman program. A district may have more than one local unit of ombudsmen.

- Provides that each local unit in a district selects a representative to serve in an at-large position on the state council. The list of selected ombudsmen will be provided to the state ombudsman and the Secretary of DOEA will appoint the three at-large members to the state council.
- Provides that each district must convene a public meeting every quarter.
- Clarifies that an ombudsman identify, investigate, and resolve complaints made by or on behalf of residents relating to actions or omissions by providers or representatives of providers of long-term care services, other public agencies, guardians, or representative payees which may adversely affect the health, safety, welfare, or rights of residents.
- Allows ombudsmen to have access to medical and social records of a resident as necessary to investigate a complaint.
- Clarifies criteria for a long-term care facility to be recognized as a Gold Seal Program.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and  
Senator Detert

586-03533-14

2014508c1

1 A bill to be entitled  
2 An act relating to the state ombudsman program;  
3 amending s. 400.0060, F.S.; revising and providing  
4 definitions; amending s. 400.0061, F.S.; revising  
5 legislative intent with respect to citizen ombudsmen;  
6 deleting references to ombudsman councils and  
7 transferring their responsibilities to representatives  
8 of the Office of State Long-Term Care Ombudsman;  
9 amending s. 400.0063, F.S.; revising duties of the  
10 office; amending s. 400.0065, F.S.; revising the  
11 purpose of the office; revising the duties and  
12 authority of the state ombudsman; requiring the state  
13 ombudsman to submit an annual report to the Governor,  
14 the Legislature, and specified agencies and entities;  
15 amending s. 400.0067, F.S.; revising duties and  
16 membership of the State Long-Term Care Ombudsman  
17 Council; amending s. 400.0069, F.S.; requiring the  
18 state ombudsman to designate and direct program  
19 districts; requiring each district to conduct public  
20 meetings; providing duties of representatives of the  
21 office in the districts; revising the appointments of  
22 and qualifications for district ombudsmen; prohibiting  
23 certain individuals from serving as ombudsmen;  
24 deleting provisions that provide for an election of a  
25 chair of a local council and the meeting times for the  
26 local council; amending s. 400.0070, F.S.; providing  
27 conditions under which a representative of the office  
28 could be found to have a conflict of interest;  
29 requiring the Department of Elderly Affairs, in

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30 consultation with the state ombudsman, to define by  
31 rule what constitutes a conflict of interest; amending  
32 s. 400.0071, F.S.; requiring the Department of Elderly  
33 Affairs to consult with the state ombudsman to adopt  
34 rules pertaining to complaint procedures; amending s.  
35 400.0073, F.S.; providing procedures for investigation  
36 of complaints; amending s. 400.0074, F.S.; revising  
37 procedures for conducting onsite administrative  
38 assessments; authorizing the department to adopt  
39 rules; amending s. 400.0075, F.S.; revising complaint  
40 notification and resolution procedures; amending s.  
41 400.0078, F.S.; providing for a resident or  
42 representative of a resident to receive additional  
43 information regarding resident rights; amending s.  
44 400.0079, F.S.; providing immunity from liability for  
45 a representative of the office under certain  
46 circumstances; amending s. 400.0081, F.S.; requiring  
47 long-term care facilities to provide representatives  
48 of the office with access to facilities, residents,  
49 and records for certain purposes; amending s.  
50 400.0083, F.S.; conforming provisions to changes made  
51 by the act; amending s. 400.0087, F.S.; providing for  
52 the office to coordinate ombudsman services with  
53 Disability Rights Florida; amending s. 400.0089, F.S.;  
54 conforming provisions to changes made by the act;  
55 amending s. 400.0091, F.S.; revising training  
56 requirements for representatives of the office and  
57 ombudsmen; amending ss. 20.41, 400.021, 400.022,  
58 400.0255, 400.1413, 400.162, 400.19, 400.191, and

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59 400.23, F.S.; conforming provisions to changes made by  
 60 the act; amending s. 400.235, F.S.; conforming  
 61 provisions to changes made by the act; revising the  
 62 additional criteria for recognition as a Gold Seal  
 63 Program facility; amending ss. 415.102, 415.1034,  
 64 415.104, 415.1055, 415.106, 415.107, 429.02, 429.07,  
 65 429.19, 429.26, 429.28, 429.34, 429.35, 429.67,  
 66 429.85, and 744.444, F.S.; conforming provisions to  
 67 changes made by the act; providing an effective date.

68  
 69 Be It Enacted by the Legislature of the State of Florida:

70  
 71 Section 1. Section 400.0060, Florida Statutes, is amended  
 72 to read:

73 400.0060 Definitions.—When used in this part, unless the  
 74 context clearly dictates otherwise, the term:

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

80 (2) "Agency" means the Agency for Health Care  
 81 Administration.

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

83 (4) "District" means a geographical area designated by the  
 84 state ombudsman in which individuals certified as ombudsmen  
 85 carry out the duties of the state ombudsman program. A district  
 86 may have more than one local unit of ombudsmen "~~Local council~~"  
 87 means a local long-term care ombudsman council designated by the

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88 ~~ombudsman pursuant to s. 400.0069. Local councils are also known~~  
 89 ~~as district long-term care ombudsman councils or district~~  
 90 ~~councils.~~

91 (5) "Long-term care facility" means a nursing home  
 92 facility, assisted living facility, adult family-care home,  
 93 board and care facility, facility in which continuing long-term  
 94 care is provided, or any other similar residential adult care  
 95 facility.

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

98 (7) "Ombudsman" means an individual who has been certified  
 99 by the state ombudsman as meeting the requirements of ss.  
 100 400.0069, 400.0070, and 400.0091 ~~the individual appointed by the~~  
 101 ~~Secretary of Elderly Affairs to head the Office of State Long-~~  
 102 ~~Term Care Ombudsman.~~

103 (8) "Representative of the office" means the state  
 104 ombudsman, an employee of the office, or an individual certified  
 105 as an ombudsman.

106 ~~(9)-(8)~~ "Resident" means an individual 18 ~~60~~ years of age or  
 107 older who resides in a long-term care facility.

108 ~~(10)-(9)~~ "Secretary" means the Secretary of Elderly Affairs.

109 ~~(11)-(10)~~ "State council" means the State Long-Term Care  
 110 Ombudsman Council created by s. 400.0067.

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

114 (13) "State ombudsman program" means the program operating  
 115 under the direction of the office.

116 Section 2. Section 400.0061, Florida Statutes, is amended

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117 to read:

118 400.0061 Legislative findings and intent; long-term care  
119 facilities.-

120 (1) The Legislature finds that conditions in long-term care  
121 facilities in this state are such that the rights, health,  
122 safety, and welfare of residents are not fully ensured by rules  
123 of the Department of Elderly Affairs or the Agency for Health  
124 Care Administration or by the good faith of owners or operators  
125 of long-term care facilities. Furthermore, there is a need for a  
126 formal mechanism whereby a long-term care facility resident, a  
127 representative of a long-term care facility resident, or any  
128 other concerned citizen may make a complaint against the  
129 facility or its employees, or against other persons who are in a  
130 position to restrict, interfere with, or threaten the rights,  
131 health, safety, or welfare of a long-term care facility  
132 resident. The Legislature finds that concerned citizens are  
133 often more effective advocates for the rights of others than  
134 governmental agencies. The Legislature further finds that in  
135 order to be eligible to receive an allotment of funds authorized  
136 and appropriated under the federal Older Americans Act, the  
137 state must establish and operate an Office of State Long-Term  
138 Care Ombudsman, to be headed by the state ~~Long-Term Care~~  
139 ombudsman, and carry out a state long-term care ombudsman  
140 program.

141 (2) It is the intent of the Legislature, therefore, to use  
142 utilize voluntary citizen ombudsmen ~~ombudsman councils~~ under the  
143 leadership of the state ombudsman, and, through them, to operate  
144 a state ~~an~~ ombudsman program, which shall, without interference  
145 by any executive agency, undertake to discover, investigate, and

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146 determine the presence of conditions or individuals who ~~which~~  
147 constitute a threat to the rights, health, safety, or welfare of  
148 the residents of long-term care facilities. To ensure that the  
149 effectiveness and efficiency of such investigations are not  
150 impeded by advance notice or delay, the Legislature intends that  
151 representatives of the office ~~ombudsman and ombudsman councils~~  
152 ~~and their designated representatives~~ not be required to obtain  
153 warrants in order to enter into or conduct investigations or  
154 onsite administrative assessments of long-term care facilities.  
155 It is the further intent of the Legislature that the environment  
156 in long-term care facilities be conducive to the dignity and  
157 independence of residents and that investigations by  
158 representatives of the office ~~ombudsman councils~~ shall further  
159 the enforcement of laws, rules, and regulations that safeguard  
160 the health, safety, and welfare of residents.

161 Section 3. Section 400.0063, Florida Statutes, is amended  
162 to read:

163 400.0063 Establishment of Office of State Long-Term Care  
164 Ombudsman; designation of ombudsman and legal advocate.-

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

167 (2) (a) The Office of State Long-Term Care Ombudsman shall  
168 be headed by the state ~~Long-Term Care~~ ombudsman, who shall serve  
169 on a full-time basis and shall personally, or through  
170 representatives of the office, carry out the purposes and  
171 functions of the state ombudsman program ~~office~~ in accordance  
172 with state and federal law.

173 (b) The state ombudsman shall be appointed by and shall  
174 serve at the pleasure of the Secretary of Elderly Affairs. The

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175 secretary shall appoint a person who has expertise and  
 176 experience in the fields of long-term care and advocacy to serve  
 177 as state ombudsman.

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

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

184 1. Assisting the state ombudsman in carrying out the duties  
 185 of the office with respect to the abuse, neglect, exploitation,  
 186 or violation of rights of residents of long-term care  
 187 facilities.

188 2. Assisting the state council and representatives of the  
 189 office local councils in carrying out their responsibilities  
 190 under this part.

191 3. Pursuing administrative, legal, and other appropriate  
 192 remedies on behalf of residents.

193 4. Serving as legal counsel to the state council and  
 194 representatives of the office local councils, or individual  
 195 members thereof, against ~~whom~~ any suit or other legal action  
 196 that is initiated in connection with the performance of the  
 197 official duties of the state ombudsman program councils or an  
 198 individual member.

199 Section 4. Section 400.0065, Florida Statutes, is amended  
 200 to read:

201 400.0065 Office of State Long-Term Care Ombudsman; duties  
 202 and responsibilities.—

203 (1) The purpose of the Office of State Long-Term Care

586-03533-14

2014508c1

204 Ombudsman ~~is shall be~~ to:

205 (a) Identify, investigate, and resolve complaints made by  
 206 or on behalf of residents of long-term care facilities relating  
 207 to actions or omissions by providers or representatives of  
 208 providers of long-term care services, other public or private  
 209 agencies, guardians, or representative payees that may adversely  
 210 affect the health, safety, welfare, or rights of the residents.

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

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

216 (d) Ensure that residents have regular and timely access to  
 217 the services provided through the office and that residents and  
 218 complainants receive timely responses from representatives of  
 219 the office to their complaints.

220 (e) Represent the interests of residents before  
 221 governmental agencies and seek administrative, legal, and other  
 222 remedies to protect the health, safety, welfare, and rights of  
 223 the residents.

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

225 (g) Analyze, comment on, and monitor the development and  
 226 implementation of federal, state, and local laws, rules, and  
 227 regulations, and other governmental policies and actions, that  
 228 pertain to the health, safety, welfare, and rights of the  
 229 residents, with respect to the adequacy of long-term care  
 230 facilities and services in the state, and recommend any changes  
 231 in such laws, rules, regulations, policies, and actions as the  
 232 office determines to be appropriate and necessary.

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233 (h) Provide technical support for the development of  
 234 resident and family councils to protect the well-being and  
 235 rights of residents.

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

238 (a) Establish and coordinate districts ~~local councils~~  
 239 throughout the state.

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

242 (c) Within the limits of appropriated federal and state  
 243 funding, employ such personnel ~~as are~~ necessary to perform  
 244 adequately the functions of the office and provide or contract  
 245 for legal services to assist the state council and  
 246 representatives of the office ~~local councils~~ in the performance  
 247 of their duties. ~~Staff positions established for the purpose of~~  
 248 ~~coordinating the activities of each local council and assisting~~  
 249 ~~its members may be filled by the ombudsman after approval by the~~  
 250 ~~secretary. Notwithstanding any other provision of this part,~~  
 251 ~~upon certification by the ombudsman that the staff member hired~~  
 252 ~~to fill any such position has completed the initial training~~  
 253 ~~required under s. 400.0091, such person shall be considered a~~  
 254 ~~representative of the State Long-Term Care Ombudsman Program for~~  
 255 ~~purposes of this part.~~

256 (d) Contract for services necessary to carry out the  
 257 activities of the office.

258 (e) Apply for, receive, and accept grants, gifts, or other  
 259 payments, including, but not limited to, real property, personal  
 260 property, and services from a governmental entity or other  
 261 public or private entity or person, and make arrangements for

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262 the use of such grants, gifts, or payments.

263 (f) Coordinate, to the greatest extent possible, state and  
 264 local ombudsman services with the protection and advocacy  
 265 systems for individuals with developmental disabilities and  
 266 mental illnesses and with legal assistance programs for the poor  
 267 through adoption of memoranda of understanding and other means.

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

271 (g)(h) Enter into a cooperative agreement with the Medicaid  
 272 Fraud Division as prescribed under s. 731(e)(2)(B) of the Older  
 273 Americans Act.

274 (h)(i) Prepare an annual report describing the activities  
 275 carried out by the office, the state council, and the districts  
 276 local councils in the year for which the report is prepared. The  
 277 state ombudsman shall submit the report to the secretary, the  
 278 United States Assistant Secretary for Aging, the Governor, the  
 279 President of the Senate, the Speaker of the House of  
 280 Representatives, the Secretary of Children and Families, and the  
 281 Secretary of Health Care Administration at least 30 days before  
 282 the convening of the regular session of the Legislature. ~~The~~  
 283 ~~secretary shall in turn submit the report to the United States~~  
 284 ~~Assistant Secretary for Aging, the Governor, the President of~~  
 285 ~~the Senate, the Speaker of the House of Representatives, the~~  
 286 ~~Secretary of Children and Family Services, and the Secretary of~~  
 287 ~~Health Care Administration.~~ The report must shall, at a minimum:  
 288 1. Contain and analyze data collected concerning complaints  
 289 about and conditions in long-term care facilities and the  
 290 disposition of such complaints.

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291 2. Evaluate the problems experienced by residents.

292 3. Analyze the successes of the state ombudsman program

293 during the preceding year, including an assessment of how

294 successfully the ~~office program~~ has carried out its

295 responsibilities under the Older Americans Act.

296 4. Provide recommendations for policy, regulatory, and

297 statutory changes designed to solve identified problems; resolve

298 residents' complaints; improve residents' lives and quality of

299 care; protect residents' rights, health, safety, and welfare;

300 and remove any barriers to the optimal operation of the state

301 ~~Long-Term Care~~ ombudsman program.

302 5. Contain recommendations from the state ~~Long-Term Care~~

303 ~~Ombudsman~~ council regarding program functions and activities and

304 recommendations for policy, regulatory, and statutory changes

305 designed to protect residents' rights, health, safety, and

306 welfare.

307 6. Contain any relevant recommendations from

308 representatives of the office ~~local councils~~ regarding program

309 functions and activities.

310 Section 5. Section 400.0067, Florida Statutes, is amended

311 to read:

312 400.0067 State Long-Term Care Ombudsman Council; duties;

313 membership.—

314 (1) There is created, within the Office of State Long-Term

315 Care Ombudsman, the State Long-Term Care Ombudsman Council.

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

317 (a) Serve as an advisory body to assist the state ombudsman

318 in reaching a consensus among districts ~~local councils~~ on issues

319 affecting residents and impacting the optimal operation of the

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320 program.

321 (b) Serve as an appellate body in receiving from the

322 districts ~~local councils~~ complaints not resolved at the district

323 ~~local~~ level. Any individual member or members of the state

324 council may enter any long-term care facility involved in an

325 appeal, pursuant to the conditions specified in s. 400.0074(2).

326 (c) Assist the state ombudsman to discover, investigate,

327 and determine the existence of abuse or neglect in any long-term

328 care facility, and work with the adult protective services

329 program as required in ss. 415.101-415.113.

330 (d) Assist the state ombudsman in eliciting, receiving,

331 responding to, and resolving complaints made by or on behalf of

332 residents.

333 (e) Elicit and coordinate state, district ~~local~~, and

334 voluntary organizational assistance for the purpose of improving

335 the care received by residents.

336 (f) Assist the state ombudsman in preparing the annual

337 report described in s. 400.0065.

338 (3) The state ~~Long-Term Care Ombudsman~~ council consists

339 ~~shall be composed~~ of one active certified ombudsman from each

340 local unit within a district ~~council member elected by each~~

341 ~~local council~~ plus three at-large members appointed by the

342 secretary Governor.

343 (a) Each local unit in a district must ~~select council shall~~

344 ~~elect by majority vote~~ a representative of its choice to serve

345 ~~from among the council members to represent the interests of the~~

346 ~~local council~~ on the state council. ~~A local council chair may~~

347 ~~not serve as the representative of the local council on the~~

348 ~~state council.~~

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349 (b)1. The state ombudsman ~~secretary, after consulting with~~  
 350 ~~the ombudsman,~~ shall submit to the secretary ~~Governor~~ a list of  
 351 individuals ~~persons~~ recommended for appointment to the at-large  
 352 positions on the state council. The list ~~may shall~~ not include  
 353 the name of any individual ~~person~~ who is currently serving in a  
 354 district ~~on a local council~~.

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

357 3. If the secretary ~~Governor~~ does not appoint an at-large  
 358 member to fill a vacant position within 60 days after the list  
 359 is submitted, the state ~~secretary, after consulting with the~~  
 360 ~~ombudsman,~~ shall appoint an at-large member to fill that vacant  
 361 position.

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

364 ~~2.~~ A member of the state council may not serve more than  
 365 two consecutive terms.

366 ~~(b) 3.~~ A district manager, in consultation with the district  
 367 ombudsmen, ~~local council~~ may recommend replacement ~~removal~~ of  
 368 its selected ombudsman ~~elected representative~~ from the state  
 369 council ~~by a majority vote~~. If the district manager, in  
 370 consultation with the district ombudsmen, selects a replacement  
 371 ombudsman, ~~the district manager council votes to remove its~~  
 372 ~~representative,~~ ~~the local council chair~~ shall ~~immediately~~ notify  
 373 the state ombudsman. ~~The secretary shall advise the Governor of~~  
 374 ~~the local council's vote upon receiving notice from the~~  
 375 ~~ombudsman.~~

376 ~~(c) 4.~~ The position of any member missing three state  
 377 council meetings within a 1-year period without cause may be

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378 declared vacant by the state ombudsman. The findings of the  
 379 state ombudsman regarding cause shall be final and binding.

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

382 ~~(e) (d) 1.~~ The state council shall elect a chair to serve for  
 383 a term of 1 year. A chair may not serve more than two  
 384 consecutive terms.

385 2. The chair shall select a vice chair from among the  
 386 members. The vice chair shall preside over the state council in  
 387 the absence of the chair.

388 3. The chair may create additional executive positions as  
 389 necessary to carry out the duties of the state council. Any  
 390 person appointed to an executive position shall serve at the  
 391 pleasure of the chair, and his or her term shall expire on the  
 392 same day as the term of the chair.

393 4. A chair may be immediately removed from office before  
 394 ~~prior to~~ the expiration of his or her term by a vote of two-  
 395 thirds of all state council members present at any meeting at  
 396 which a quorum is present. If a chair is removed from office  
 397 before ~~prior to~~ the expiration of his or her term, a replacement  
 398 chair shall be chosen during the same meeting in the same manner  
 399 as described in this paragraph, and the term of the replacement  
 400 chair shall begin immediately. The replacement chair shall serve  
 401 for the remainder of the term and is eligible to serve two  
 402 subsequent consecutive terms.

403 ~~(f) (e) 1.~~ The state council shall meet upon the call of the  
 404 chair or upon the call of the state ombudsman. The state council  
 405 shall meet at least quarterly but may meet more frequently as  
 406 needed.

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

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

414 ~~(g)(f)~~ Members ~~may not shall~~ receive ~~no~~ compensation but  
415 shall, with approval from the state ombudsman, be reimbursed for  
416 per diem and travel expenses as provided in s. 112.061.

417 Section 6. Section 400.0069, Florida Statutes, is amended  
418 to read:

419 400.0069 ~~Local~~ Long-term care ombudsman districts councils;  
420 duties; appointment membership.-

421 (1)(a) The state ombudsman shall designate districts local  
422 ~~long-term care ombudsman councils~~ to carry out the duties of the  
423 state ~~Long-Term Care~~ ombudsman program ~~within local communities~~.  
424 Each district local council shall function under the direction  
425 of the state ombudsman.

426 (b) The state ombudsman shall ensure that there are  
427 representatives of the office ~~is at least one local council~~  
428 operating in each district ~~of the department's planning and~~  
429 ~~service areas. The ombudsman may create additional local~~  
430 ~~councils~~ as necessary to ensure that residents throughout the  
431 state have adequate access to state ~~Long-Term Care~~ ombudsman  
432 program services. ~~The ombudsman, after approval from the~~  
433 ~~secretary, shall designate the jurisdictional boundaries of each~~  
434 ~~local council~~.

435 (c) Each district shall convene a public meeting every

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436 quarter.

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

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

442 (b) Discover, investigate, and determine the existence of  
443 abuse, ~~or~~ neglect, or exploitation using in any long-term care  
444 ~~facility and to use~~ the procedures provided for in ss. 415.101-  
445 415.113 when applicable.

446 (c) Identify Elicit, receive, investigate, respond to, and  
447 resolve complaints made by or on behalf of residents relating to  
448 actions or omissions by providers or representatives of  
449 providers of long-term care services, other public agencies,  
450 guardians, or representative payees which may adversely affect  
451 the health, safety, welfare, or rights of residents.

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

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

461 (f) Recommend that the state ombudsman and the legal  
462 advocate seek administrative, legal, and other remedies to  
463 protect the health, safety, welfare, and rights of ~~the~~  
464 residents.

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

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

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

475 (4) Each district ~~local council~~ shall be composed of  
 476 ombudsmen members whose primary residences are ~~residence is~~  
 477 located within the boundaries of the district local council's  
 478 jurisdiction.

479 (a) Upon good cause shown, the state ombudsman may appoint  
 480 an ombudsman to another district. ~~The ombudsman shall strive to~~  
 481 ~~ensure that each local council include the following persons as~~  
 482 ~~members:~~

483 ~~1. At least one medical or osteopathic physician whose~~  
 484 ~~practice includes or has included a substantial number of~~  
 485 ~~geriatric patients and who may practice in a long-term care~~  
 486 ~~facility;~~

487 ~~2. At least one registered nurse who has geriatric~~  
 488 ~~experience;~~

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

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

491 ~~5. At least six nursing home residents or representative~~  
 492 ~~consumer advocates for nursing home residents;~~

493 ~~6. At least three residents of assisted living facilities~~

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494 ~~or adult family care homes or three representative consumer~~  
 495 ~~advocates for alternative long-term care facility residents;~~

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

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

498 (b) The following individuals may not be appointed as  
 499 ombudsmen:

500 1. The owner or representative of a long-term care  
 501 facility.

502 2. A provider or representative of a provider of long-term  
 503 care service.

504 3. An employee of the agency.

505 4. An employee of the department, except for a  
 506 representative of the office.

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

508 6. An employee of the Agency for Persons with Disabilities  
 509 ~~In no case shall the medical director of a long-term care~~  
 510 ~~facility or an employee of the agency, the department, the~~  
 511 ~~Department of Children and Family Services, or the Agency for~~  
 512 ~~Persons with Disabilities serve as a member or as an ex officio~~  
 513 ~~member of a council.~~

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

515 1. Individuals wishing to join a local council shall Submit  
 516 an application to the state ombudsman or his or her designee.

517 2. Successfully complete level 2 background screening  
 518 pursuant to s. 430.0402 and chapter 435 ~~The ombudsman shall~~  
 519 ~~review the individual's application and advise the secretary of~~  
 520 ~~his or her recommendation for approval or disapproval of the~~  
 521 ~~candidate's membership on the local council. If the secretary~~  
 522 ~~approves of the individual's membership, the individual shall be~~

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523 ~~appointed as a member of the local council.~~  
 524 (b) The state ombudsman shall approve or deny the  
 525 appointment of the individual as an ombudsman ~~The secretary may~~  
 526 ~~rescind the ombudsman's approval of a member on a local council~~  
 527 ~~at any time. If the secretary rescinds the approval of a member~~  
 528 ~~on a local council, the ombudsman shall ensure that the~~  
 529 ~~individual is immediately removed from the local council on~~  
 530 ~~which he or she serves and the individual may no longer~~  
 531 ~~represent the State Long-Term Care Ombudsman Program until the~~  
 532 ~~secretary provides his or her approval.~~  
 533 (c) Upon appointment as an ombudsman, the individual may  
 534 participate in district activities but may not represent the  
 535 office or conduct any authorized program duties until the  
 536 individual has completed the initial training specified in s.  
 537 400.0091(1) and has been certified by the state ombudsman.  
 538 (d) The state ombudsman, for good cause shown, such as  
 539 development of a conflict of interest, failure to adhere to the  
 540 policies and procedures established by the office, or  
 541 demonstrated inability to carry out the responsibilities of the  
 542 office, may rescind the appointment of an individual as an  
 543 ombudsman. After the appointment is rescinded, the individual  
 544 may not conduct any duties as an ombudsman and may not represent  
 545 the office or the state ombudsman program ~~A local council may~~  
 546 ~~recommend the removal of one or more of its members by~~  
 547 ~~submitting to the ombudsman a resolution adopted by a two-thirds~~  
 548 ~~vote of the members of the council stating the name of the~~  
 549 ~~member or members recommended for removal and the reasons for~~  
 550 ~~the recommendation. If such a recommendation is adopted by a~~  
 551 ~~local council, the local council chair or district coordinator~~

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552 ~~shall immediately report the council's recommendation to the~~  
 553 ~~ombudsman. The ombudsman shall review the recommendation of the~~  
 554 ~~local council and advise the secretary of his or her~~  
 555 ~~recommendation regarding removal of the council member or~~  
 556 ~~members.~~  
 557 (6)(a) ~~Each local council shall elect a chair for a term of~~  
 558 ~~1 year. There shall be no limitation on the number of terms that~~  
 559 ~~an approved member of a local council may serve as chair.~~  
 560 (b) ~~The chair shall select a vice chair from among the~~  
 561 ~~members of the council. The vice chair shall preside over the~~  
 562 ~~council in the absence of the chair.~~  
 563 (c) ~~The chair may create additional executive positions as~~  
 564 ~~necessary to carry out the duties of the local council. Any~~  
 565 ~~person appointed to an executive position shall serve at the~~  
 566 ~~pleasure of the chair, and his or her term shall expire on the~~  
 567 ~~same day as the term of the chair.~~  
 568 (d) ~~A chair may be immediately removed from office prior to~~  
 569 ~~the expiration of his or her term by a vote of two-thirds of the~~  
 570 ~~members of the local council. If any chair is removed from~~  
 571 ~~office prior to the expiration of his or her term, a replacement~~  
 572 ~~chair shall be elected during the same meeting, and the term of~~  
 573 ~~the replacement chair shall begin immediately. The replacement~~  
 574 ~~chair shall serve for the remainder of the term of the person he~~  
 575 ~~or she replaced.~~  
 576 (7) ~~Each local council shall meet upon the call of its~~  
 577 ~~chair or upon the call of the ombudsman. Each local council~~  
 578 ~~shall meet at least once a month but may meet more frequently if~~  
 579 ~~necessary.~~  
 580 (6)(8) An ombudsman may not ~~A member of a local council~~

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581 ~~shall~~ receive ~~no~~ compensation but shall, with approval from the  
 582 state ombudsman, be reimbursed for travel expenses ~~both within~~  
 583 ~~and outside the jurisdiction of the local council~~ in accordance  
 584 with ~~the provisions of~~ s. 112.061.

585 ~~(7)(9) A representative of the office may~~ The local  
 586 ~~councils are authorized to~~ call upon appropriate state agencies  
 587 ~~of state government~~ for ~~such~~ professional assistance as ~~may be~~  
 588 needed in the discharge of his or her ~~their~~ duties, and ~~such~~.  
 589 All state agencies shall cooperate ~~with the local councils~~ in  
 590 providing requested information and agency representation at  
 591 ~~council meetings~~.

592 Section 7. Section 400.0070, Florida Statutes, is amended  
 593 to read:

594 400.0070 Conflicts of interest.—

595 (1) A representative of the office may ~~The ombudsman shall~~  
 596 not:

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

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

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

607 (2) Each representative employee of the office, ~~each state~~  
 608 ~~council member, and each local council member~~ shall certify that  
 609 he or she does not have any ~~has no~~ conflict of interest.

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

612 (a) Situations that constitute an individual ~~a person~~  
 613 having a conflict of interest ~~which that~~ could materially affect  
 614 the objectivity or capacity of the individual ~~a person~~ to serve  
 615 ~~as a representative on an ombudsman council, or as an employee~~  
 616 of the office, ~~while carrying out the purposes of the State~~  
 617 ~~Long-Term Care Ombudsman Program as specified in this part.~~

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

621 Section 8. Section 400.0071, Florida Statutes, is amended  
 622 to read:

623 400.0071 State ~~Long-Term Care~~ ombudsman program complaint  
 624 procedures.—The department, in consultation with the state  
 625 ombudsman, shall adopt rules implementing state and local  
 626 complaint procedures. The rules must include procedures for  
 627 receiving, investigating, identifying, and resolving complaints  
 628 concerning the health, safety, welfare, and rights of residents+

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

631 ~~(2) Conducting investigations of a long-term care facility~~  
 632 ~~or an employee of a long-term care facility subsequent to~~  
 633 ~~receiving a complaint.~~

634 ~~(3) Conducting onsite administrative assessments of long-~~  
 635 ~~term care facilities.~~

636 Section 9. Section 400.0073, Florida Statutes, is amended  
 637 to read:

638 400.0073 Complaint State and local ombudsman council



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639 investigations.-

640 (1) A representative of the office ~~local council~~ shall  
 641 identify and investigate, within a reasonable time after a  
 642 complaint is made, any complaint made by or on behalf of a  
 643 resident relating to actions or omissions by providers or  
 644 representatives of providers of long-term care services, other  
 645 public agencies, guardians, or representative payees which may  
 646 adversely affect the health, safety, welfare, or rights of  
 647 residents, a representative of a resident, or any other credible  
 648 source based on an action or omission by an administrator, an  
 649 employee, or a representative of a long-term care facility which  
 650 might be:

651 (a) ~~Contrary to law;~~652 (b) ~~Unreasonable, unfair, oppressive, or unnecessarily~~  
653 ~~discriminatory, even though in accordance with law;~~654 (c) ~~Based on a mistake of fact;~~655 (d) ~~Based on improper or irrelevant grounds;~~656 (e) ~~Unaccompanied by an adequate statement of reasons;~~657 (f) ~~Performed in an inefficient manner; or~~658 (g) ~~Otherwise adversely affecting the health, safety,~~  
659 ~~welfare, or rights of a resident.~~660 (2) ~~In an investigation, both the state and local councils~~  
661 ~~have the authority to hold public hearings.~~662 (3) ~~Subsequent to an appeal from a local council, the state~~  
663 ~~council may investigate any complaint received by the local~~  
664 ~~council involving a long-term care facility or a resident.~~665 (2)(4) If a representative of the office ~~the ombudsman or~~  
666 ~~any state or local council member~~ is not allowed to enter a  
667 long-term care facility, the administrator of the facility shall

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668 be considered to have interfered with a representative of the  
 669 office, ~~the state council, or the local council~~ in the  
 670 performance of official duties as described in s. 400.0083(1)  
 671 and to have violated ~~committed a violation of~~ this part. The  
 672 representative of the office ~~ombudsman~~ shall report a facility's  
 673 refusal to allow entry to the facility to the state ombudsman or  
 674 his or her designee, who shall report the incident to the  
 675 agency, and the agency shall record the report and take it into  
 676 consideration when determining actions allowable under s.  
 677 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.  
 678 429.71.

679 Section 10. Section 400.0074, Florida Statutes, is amended  
 680 to read:

681 400.0074 ~~Local ombudsman council~~ Onsite administrative  
 682 assessments.-

683 (1) A representative of the office shall ~~In addition to any~~  
 684 ~~specific investigation conducted pursuant to a complaint, the~~  
 685 ~~local council shall conduct, at least annually, an onsite~~  
 686 ~~administrative assessment of each nursing home, assisted living~~  
 687 ~~facility, and adult family-care home within its jurisdiction.~~  
 688 This administrative assessment must be resident-centered and  
 689 must shall focus on factors affecting the rights, health,  
 690 safety, and welfare of the residents. ~~Each local council is~~  
 691 ~~encouraged to conduct a similar onsite administrative assessment~~  
 692 ~~of each additional long-term care facility within its~~  
 693 ~~jurisdiction.~~

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

696 (a) To the extent possible and reasonable, the

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697 administrative assessment may assessments shall not duplicate  
 698 the efforts of ~~the agency~~ surveys and inspections conducted by  
 699 state agencies of long-term care facilities under part II of  
 700 ~~this chapter and parts I and II of chapter 429.~~

701 (b) An administrative assessment shall be conducted at a  
 702 time and for a duration necessary to produce the information  
 703 required to complete the assessment ~~carry out the duties of the~~  
 704 ~~local council.~~

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

708 (d) A representative of the office ~~local council member~~  
 709 ~~physically~~ present for the administrative assessment must shall  
 710 identify himself or herself to the administrator ~~and cite the~~  
 711 ~~specific statutory authority for his or her assessment of the~~  
 712 facility or his or her designee.

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

715 (f) A representative of the office ~~local council member~~ may  
 716 not enter a single-family residential unit within a long-term  
 717 care facility during an administrative assessment without the  
 718 permission of the resident or the representative of the  
 719 resident.

720 (g) An administrative assessment shall must be conducted in  
 721 a manner that does not impose an will impose no unreasonable  
 722 burden on a long-term care facility.

723 (3) ~~Regardless of jurisdiction, the ombudsman may authorize~~  
 724 ~~a state or local council member to assist another local council~~  
 725 ~~to perform the administrative assessments described in this~~

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726 ~~section.~~

727 (4) An onsite administrative assessment may not be  
 728 accomplished by forcible entry. However, if a representative of  
 729 ~~the office ombudsman or a state or local council member~~ is not  
 730 allowed to enter a long-term care facility, the administrator of  
 731 the facility shall be considered to have interfered with a  
 732 ~~representative of the office, the state council, or the local~~  
 733 ~~council~~ in the performance of official duties as described in s.  
 734 400.0083(1) and to have committed a violation of this part. The  
 735 representative of the office ~~ombudsman~~ shall report the refusal  
 736 by a facility to allow entry to the state ombudsman or his or  
 737 her designee, who shall then report the incident to the agency,  
 738 and the agency shall record the report and take it into  
 739 consideration when determining actions allowable under s.  
 740 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.  
 741 429.71.

742 (4) The department, in consultation with the state  
 743 ombudsman, may adopt rules implementing procedures for  
 744 conducting onsite administrative assessments of long-term care  
 745 facilities.

746 Section 11. Section 400.0075, Florida Statutes, is amended  
 747 to read:

748 400.0075 Complaint notification and resolution procedures.-

749 (1) (a) Any complaint ~~or problem~~ verified by a  
 750 representative of the office ~~an ombudsman council~~ as a result of  
 751 an investigation may ~~or onsite administrative assessment, which~~  
 752 ~~complaint or problem is determined to require remedial action by~~  
 753 ~~the local council, shall~~ be identified and brought to the  
 754 attention of the long-term care facility administrator subject

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755 ~~to the confidentiality provisions of s. 400.0077 in writing.~~  
 756 Upon receipt of the information ~~such document~~, the  
 757 administrator, with the concurrence of the representative of the  
 758 office local council chair, shall establish target dates for  
 759 taking appropriate remedial action. If, by the target date, the  
 760 remedial action is not completed or forthcoming, the  
 761 representative may extend the target date if there is reason to  
 762 believe such action would facilitate the resolution of the  
 763 complaint, or the representative may refer the complaint to the  
 764 district manager local council chair may, after obtaining  
 765 approval from the ombudsman and a majority of the members of the  
 766 local council:

- 767 1. ~~Extend the target date if the chair has reason to~~  
 768 ~~believe such action would facilitate the resolution of the~~  
 769 ~~complaint.~~
- 770 2. ~~In accordance with s. 400.0077, publicize the complaint,~~  
 771 ~~the recommendations of the council, and the response of the~~  
 772 ~~long-term care facility.~~
- 773 3. ~~Refer the complaint to the state council.~~

774 (b) If an ombudsman determines the local council chair  
 775 believes that the health, safety, welfare, or rights of a the  
 776 resident are in imminent danger, the ombudsman must immediately  
 777 notify the district manager. The district manager chair shall  
 778 notify the ombudsman or legal advocate, who, after verifying  
 779 that such imminent danger exists, must notify the appropriate  
 780 state agencies, including law enforcement agencies, the state  
 781 ombudsman, and the legal advocate to ensure the protection of  
 782 shall seek immediate legal or administrative remedies to protect  
 783 the resident.

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784 (c) If the state ombudsman or legal advocate has reason to  
 785 believe that the long-term care facility or an employee of the  
 786 facility has committed a criminal act, the state ombudsman or  
 787 legal advocate shall provide the local law enforcement agency  
 788 with the relevant information to initiate an investigation of  
 789 the case.

790 (2) ~~(a)~~ Upon referral from a district local council, the  
 791 state ombudsman or his or her designee council shall assume the  
 792 responsibility for the disposition of the complaint. If a long-  
 793 term care facility fails to take action to resolve or remedy the  
 794 on a complaint by the state council, the state ombudsman council  
 795 may, after obtaining approval from the ombudsman and a majority  
 796 of the state council members:

- 797 (a) ~~1-~~ In accordance with s. 400.0077, publicize the  
 798 complaint, the recommendations of the representatives of the  
 799 office local or state council, and the response of the long-term  
 800 care facility.
- 801 (b) ~~2-~~ Recommend to the department and the agency a series  
 802 of facility reviews pursuant to s. 400.19, s. 429.34, or s.  
 803 429.67 to ensure correction and nonrecurrence of the conditions  
 804 that gave give rise to the complaint complaints against the a  
 805 long-term care facility.
- 806 (c) ~~3-~~ Recommend to the department and the agency that the  
 807 long-term care facility no longer receive payments under any  
 808 state assistance program, including Medicaid.
- 809 (d) ~~4-~~ Recommend to the department and the agency that  
 810 procedures be initiated for action against revocation of  
 811 long-term care facility's license in accordance with chapter  
 812 120.

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813 ~~(b) If the state council chair believes that the health,~~  
 814 ~~safety, welfare, or rights of the resident are in imminent~~  
 815 ~~danger, the chair shall notify the ombudsman or legal advocate,~~  
 816 ~~who, after verifying that such imminent danger exists, shall~~  
 817 ~~seek immediate legal or administrative remedies to protect the~~  
 818 ~~resident.~~

819 (3)(c) If the state ombudsman, after consultation with the  
 820 legal advocate, has reason to believe that the long-term care  
 821 facility or an employee of the facility has committed a criminal  
 822 act, the office ombudsman shall provide the local law  
 823 enforcement agency with the relevant information to initiate an  
 824 investigation of the case.

825 Section 12. Section 400.0078, Florida Statutes, is amended  
 826 to read:

827 400.0078 Citizen access to state ~~Long-Term Care~~ ombudsman  
 828 program services.-

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

833 ~~(2) Every resident or representative of a resident shall~~  
 834 ~~receive,~~ Upon admission to a long-term care facility, each  
 835 resident or representative of a resident must receive  
 836 information regarding:

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

839 (b) The statewide toll-free telephone number and e-mail  
 840 address for receiving complaints,~~7~~ and

841 (c) Information that retaliatory action cannot be taken

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842 against a resident for presenting grievances or for exercising  
 843 any other resident rights.

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

846  
 847 Residents or their representatives must be furnished additional  
 848 copies of this information upon request.

849 Section 13. Section 400.0079, Florida Statutes, is amended  
 850 to read:

851 400.0079 Immunity.-

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

856 (2) Representatives of the office and the ombudsman or any  
 857 person authorized by the ombudsman to act on behalf of the  
 858 office, as well as all members of the state council are and  
 859 local councils, shall be immune from any liability, civil or  
 860 criminal, that otherwise might be incurred or imposed during the  
 861 good faith performance of official duties.

862 Section 14. Section 400.0081, Florida Statutes, is amended  
 863 to read:

864 400.0081 Access to facilities, residents, and records.-

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

868 (a) Access to Any portion of the long-term care facility  
 869 and residents any resident as necessary to investigate or  
 870 resolve a complaint.

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871 (b) Appropriate access to medical and social records of a  
872 resident for review ~~as necessary to investigate or resolve a~~  
873 ~~complaint~~, if:

- 874 1. The representative of the office has the permission of  
875 the resident or the legal representative of the resident; or  
876 2. The resident is unable to consent to the review and does  
877 not have a ~~has no~~ legal representative.

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

- 880 1. A legal representative or guardian of the resident  
881 refuses to give permission;  
882 2. A representative of the office has reasonable cause to  
883 believe that the legal representative or guardian is not acting  
884 in the best interests of the resident; and

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

887 (d) Access to the administrative records, policies, and  
888 documents to which residents or the general public has ~~have~~  
889 access.

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

893 (2) The department, in consultation with the state  
894 ombudsman ~~and the state council~~, may adopt rules to establish  
895 procedures to ensure access to facilities, residents, and  
896 records as described in this section.

897 Section 15. Section 400.0083, Florida Statutes, is amended  
898 to read:

899 400.0083 Interference; retaliation; penalties.—

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900 (1) A ~~It shall be unlawful for any~~ person, long-term care  
901 facility, or other entity may not ~~to~~ willfully interfere with a  
902 representative of the office ~~or~~ the state council, ~~or a local~~  
903 ~~council~~ in the performance of official duties.

904 (2) A ~~It shall be unlawful for any~~ person, long-term care  
905 facility, or other entity may not ~~to~~ knowingly or willfully take  
906 action or retaliate against any resident, employee, or other  
907 person for filing a complaint with, providing information to, or  
908 otherwise cooperating with any representative of the office ~~or~~  
909 the state council, ~~or a local council~~.

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

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

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

916 Section 16. Section 400.0087, Florida Statutes, is amended  
917 to read:

918 400.0087 Department oversight; funding.—

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

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

926 (b) The department may divert from the federal ombudsman  
927 appropriation an amount equal to the department's administrative  
928 cost ratio to cover the costs associated with administering the

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929 state ombudsman program. The remaining allotment from the Older  
930 Americans Act program shall be expended on direct ombudsman  
931 activities.

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

935 (3) The department is responsible for ensuring that the  
936 office:

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

939 (b) Provides information to public and private agencies,  
940 legislators, and others.

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

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

947 (4) The department shall also:

948 (a) Receive and disburse state and federal funds for  
949 purposes that the state ombudsman has formulated in accordance  
950 with the Older Americans Act.

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

954 Section 17. Section 400.0089, Florida Statutes, is amended  
955 to read:

956 400.0089 Complaint data reports.—The office shall maintain  
957 a statewide uniform reporting system to collect and analyze data

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958 relating to complaints and conditions in long-term care  
959 facilities and to residents for the purpose of identifying and  
960 resolving ~~complaints significant problems~~. The office shall  
961 publish quarterly and make readily available information  
962 pertaining to the number and types of complaints received by the  
963 state ~~Long-Term Care~~ ombudsman program and shall include such  
964 information in the annual report required under s. 400.0065.

965 Section 18. Section 400.0091, Florida Statutes, is amended  
966 to read:

967 400.0091 Training.—The state ombudsman shall ensure that  
968 appropriate training is provided to all representatives  
969 ~~employees~~ of the office ~~and to the members of the state and~~  
970 ~~local councils~~.

971 (1) All representatives ~~state and local council members and~~  
972 ~~employees~~ of the office shall be given a minimum of 20 hours of  
973 training upon employment with the office or appointment as an  
974 ombudsman. ~~Ten approval as a state or local council member and~~  
975 ~~40~~ hours of continuing education is required annually  
976 thereafter.

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

980 (a) Resident confidentiality.

981 (b) Guardianships and powers of attorney.

982 (c) Medication administration.

983 (d) Care and medication of residents with dementia and  
984 Alzheimer's disease.

985 (e) Accounting for residents' funds.

986 (f) Discharge rights and responsibilities.

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987 (g) Cultural sensitivity.

988 (h) Any other topic related to residency within a long-term  
989 care facility recommended by the secretary.

990 (3) ~~An individual No employee, officer, or representative~~  
991 ~~of the office or of the state or local councils~~, other than the  
992 state ombudsman, may not hold himself or herself out as a  
993 representative of the office ~~State Long-Term Care Ombudsman~~  
994 ~~Program~~ or conduct any authorized program duty described in this  
995 part unless the individual person has received the training  
996 required by this section and has been certified by the state  
997 ombudsman as qualified to carry out ombudsman activities on  
998 behalf of the office ~~or the state or local councils~~.

999 Section 19. Subsection (4) of section 20.41, Florida  
1000 Statutes, is amended to read:

1001 20.41 Department of Elderly Affairs.—There is created a  
1002 Department of Elderly Affairs.

1003 (4) The department shall administer the Office of State  
1004 Long-Term Care Ombudsman Council, created by s. 400.0063  
1005 ~~400.0067, and the local long-term care ombudsman councils,~~  
1006 ~~created by s. 400.0069~~ and shall, as required by s. 712 of the  
1007 federal Older Americans Act of 1965, ensure that ~~both~~ the state  
1008 office operates and local long-term care ombudsman councils  
1009 ~~operate~~ in compliance with the Older Americans Act.

1010 Section 20. Subsections (10) through (19) of section  
1011 400.021, Florida Statutes, are amended to read:

1012 400.021 Definitions.—When used in this part, unless the  
1013 context otherwise requires, the term:

1014 ~~(10) "Local ombudsman council" means a local long-term care~~  
1015 ~~ombudsman council established pursuant to s. 400.0069, located~~

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1016 ~~within the Older Americans Act planning and service areas.~~

1017 (10)-(11) "Nursing home bed" means an accommodation which is  
1018 ready for immediate occupancy, or is capable of being made ready  
1019 for occupancy within 48 hours, excluding provision of staffing;  
1020 and which conforms to minimum space requirements, including the  
1021 availability of appropriate equipment and furnishings within the  
1022 48 hours, as specified by rule of the agency, for the provision  
1023 of services specified in this part to a single resident.

1024 (11)-(12) "Nursing home facility" means any facility which  
1025 provides nursing services as defined in part I of chapter 464  
1026 and which is licensed according to this part.

1027 (12)-(13) "Nursing service" means such services or acts as  
1028 may be rendered, directly or indirectly, to and in behalf of a  
1029 person by individuals as defined in s. 464.003.

1030 (13) "Office" has the same meaning as in s. 400.0060.

1031 (14) "Planning and service area" means the geographic area  
1032 in which the Older Americans Act programs are administered and  
1033 services are delivered by the Department of Elderly Affairs.

1034 (15) "Representative of the office" has the same meaning as  
1035 in s. 400.0060.

1036 (16)-(15) "Respite care" means admission to a nursing home  
1037 for the purpose of providing a short period of rest or relief or  
1038 emergency alternative care for the primary caregiver of an  
1039 individual receiving care at home who, without home-based care,  
1040 would otherwise require institutional care.

1041 (17)-(16) "Resident care plan" means a written plan  
1042 developed, maintained, and reviewed not less than quarterly by a  
1043 registered nurse, with participation from other facility staff  
1044 and the resident or his or her designee or legal representative,

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1045 which includes a comprehensive assessment of the needs of an  
 1046 individual resident; the type and frequency of services required  
 1047 to provide the necessary care for the resident to attain or  
 1048 maintain the highest practicable physical, mental, and  
 1049 psychosocial well-being; a listing of services provided within  
 1050 or outside the facility to meet those needs; and an explanation  
 1051 of service goals.

1052 ~~(18)(17)~~ "Resident designee" means a person, other than the  
 1053 owner, administrator, or employee of the facility, designated in  
 1054 writing by a resident or a resident's guardian, if the resident  
 1055 is adjudicated incompetent, to be the resident's representative  
 1056 for a specific, limited purpose.

1057 ~~(19)(18)~~ "State ombudsman program council" has the same  
 1058 meaning as in s. 400.0060 means the State Long-Term Care  
 1059 Ombudsman Council established pursuant to s. 400.0067.

1060 ~~(20)(19)~~ "Therapeutic spa services" means bathing, nail,  
 1061 and hair care services and other similar services related to  
 1062 personal hygiene.

1063 Section 21. Paragraph (c) of subsection (1) and subsections  
 1064 (2) and (3) of section 400.022, Florida Statutes, are amended to  
 1065 read:

1066 400.022 Residents' rights.—

1067 (1) All licensees of nursing home facilities shall adopt  
 1068 and make public a statement of the rights and responsibilities  
 1069 of the residents of such facilities and shall treat such  
 1070 residents in accordance with the provisions of that statement.  
 1071 The statement shall assure each resident the following:

1072 (c) Any entity or individual that provides health, social,  
 1073 legal, or other services to a resident has the right to have

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1074 reasonable access to the resident. The resident has the right to  
 1075 deny or withdraw consent to access at any time by any entity or  
 1076 individual. Notwithstanding the visiting policy of the facility,  
 1077 the following individuals must be permitted immediate access to  
 1078 the resident:

1079 1. Any representative of the federal or state government,  
 1080 including, but not limited to, representatives of the Department  
 1081 of Children and ~~Families Family Services~~, the Department of  
 1082 Health, the Agency for Health Care Administration, the Office of  
 1083 the Attorney General, and the Department of Elderly Affairs; any  
 1084 law enforcement officer; any representative members of the  
 1085 office state or local ombudsman council; and the resident's  
 1086 individual physician.

1087 2. Subject to the resident's right to deny or withdraw  
 1088 consent, immediate family or other relatives of the resident.

1089  
 1090 The facility must allow representatives of the office state  
 1091 Long-Term Care ombudsman Council to examine a resident's  
 1092 clinical records with the permission of the resident or the  
 1093 resident's legal representative and consistent with state law.

1094 (2) The licensee for each nursing home shall orally inform  
 1095 the resident of the resident's rights and provide a copy of the  
 1096 statement required by subsection (1) to each resident or the  
 1097 resident's legal representative at or before the resident's  
 1098 admission to a facility. The licensee shall provide a copy of  
 1099 the resident's rights to each staff member of the facility. Each  
 1100 such licensee shall prepare a written plan and provide  
 1101 appropriate staff training to implement ~~the provisions of~~ this  
 1102 section. The written statement of rights must include a



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1103 statement that a resident may file a complaint with the agency  
 1104 or state local ombudsman program council. The statement must be  
 1105 in boldfaced type and ~~shall include the name, address, and~~  
 1106 telephone number and e-mail address of the state numbers of the  
 1107 ~~local~~ ombudsman program council and the telephone number of the  
 1108 central abuse hotline where complaints may be lodged.

1109 (3) Any violation of the resident's rights set forth in  
 1110 this section constitutes ~~shall constitute~~ grounds for action by  
 1111 the agency under ~~the provisions of~~ s. 400.102, s. 400.121, or  
 1112 part II of chapter 408. In order to determine whether the  
 1113 licensee is adequately protecting residents' rights, the  
 1114 licensure inspection of the facility must ~~shall~~ include private  
 1115 informal conversations with a sample of residents to discuss  
 1116 residents' experiences within the facility with respect to  
 1117 rights specified in this section and general compliance with  
 1118 standards, and consultation with the state ombudsman program  
 1119 ~~council in the local planning and service area of the Department~~  
 1120 ~~of Elderly Affairs in which the nursing home is located.~~

1121 Section 22. Subsections (8), (9), and (11) through (14) of  
 1122 section 400.0255, Florida Statutes, are amended to read:

1123 400.0255 Resident transfer or discharge; requirements and  
 1124 procedures; hearings.-

1125 (8) The notice required by subsection (7) must be in  
 1126 writing and must contain all information required by state and  
 1127 federal law, rules, or regulations applicable to Medicaid or  
 1128 Medicare cases. The agency shall develop a standard document to  
 1129 be used by all facilities licensed under this part for purposes  
 1130 of notifying residents of a discharge or transfer. Such document  
 1131 must include a means for a resident to request the office local

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1132 ~~long-term care ombudsman council~~ to review the notice and  
 1133 request information about or assistance with initiating a fair  
 1134 hearing with the department's Office of Appeals Hearings. In  
 1135 addition to any other pertinent information included, the form  
 1136 shall specify the reason allowed under federal or state law that  
 1137 the resident is being discharged or transferred, with an  
 1138 explanation to support this action. Further, the form must ~~shall~~  
 1139 state the effective date of the discharge or transfer and the  
 1140 location to which the resident is being discharged or  
 1141 transferred. The form must ~~shall~~ clearly describe the resident's  
 1142 appeal rights and the procedures for filing an appeal, including  
 1143 the right to request the office local ~~ombudsman council~~ to  
 1144 review the notice of discharge or transfer. A copy of the notice  
 1145 must be placed in the resident's clinical record, and a copy  
 1146 must be transmitted to the resident's legal guardian or  
 1147 representative and to the office local ~~ombudsman council~~ within  
 1148 5 business days after signature by the resident or resident  
 1149 designee.

1150 (9) A resident may request that the office local ~~ombudsman~~  
 1151 ~~council~~ review any notice of discharge or transfer given to the  
 1152 resident. When requested by a resident to review a notice of  
 1153 discharge or transfer, the office local ~~ombudsman council~~ shall  
 1154 do so within 7 days after receipt of the request. The nursing  
 1155 home administrator, or the administrator's designee, must  
 1156 forward the request for review contained in the notice to the  
 1157 office local ~~ombudsman council~~ within 24 hours after such  
 1158 request is submitted. Failure to forward the request within 24  
 1159 hours after the request is submitted shall toll the running of  
 1160 the 30-day advance notice period until the request has been

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1161 forwarded.

1162 (11) Notwithstanding paragraph (10)(b), an emergency  
 1163 discharge or transfer may be implemented as necessary pursuant  
 1164 to state or federal law during the ~~period of~~ time after the  
 1165 notice is given and before the time a hearing decision is  
 1166 rendered. Notice of an emergency discharge or transfer to the  
 1167 resident, the resident's legal guardian or representative, and  
 1168 the office local ombudsman council if requested pursuant to  
 1169 subsection (9) must be by telephone or in person. This notice  
 1170 shall be given before the transfer, if possible, or as soon  
 1171 thereafter as practicable. A representative of the office local  
 1172 ~~ombudsman council~~ conducting a review under this subsection  
 1173 shall do so within 24 hours after receipt of the request. The  
 1174 resident's file must be documented to show who was contacted,  
 1175 whether the contact was by telephone or in person, and the date  
 1176 and time of the contact. If the notice is not given in writing,  
 1177 written notice meeting the requirements of subsection (8) must  
 1178 be given the next working day.

1179 (12) After receipt of any notice required under this  
 1180 section, the office local ombudsman council may request a  
 1181 private informal conversation with a resident to whom the notice  
 1182 is directed, and, if known, a family member or the resident's  
 1183 legal guardian or designee, to ensure that the facility is  
 1184 proceeding with the discharge or transfer in accordance with ~~the~~  
 1185 ~~requirements of~~ this section. If requested, the office local  
 1186 ~~ombudsman council~~ shall assist the resident with filing an  
 1187 appeal of the proposed discharge or transfer.

1188 (13) The following persons must be present at all hearings  
 1189 authorized under this section:

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1190 (a) The resident, or the resident's legal representative or  
 1191 designee.

1192 (b) The facility administrator, or the facility's legal  
 1193 representative or designee.

1194  
 1195 A representative of the office local long-term care ombudsman  
 1196 ~~council~~ may be present at all hearings authorized by this  
 1197 section.

1198 (14) In any hearing under this section, the following  
 1199 information concerning the parties shall be confidential and  
 1200 exempt from ~~the provisions of~~ s. 119.07(1):

1201 (a) Names and addresses.

1202 (b) Medical services provided.

1203 (c) Social and economic conditions or circumstances.

1204 (d) Evaluation of personal information.

1205 (e) Medical data, including diagnosis and past history of  
 1206 disease or disability.

1207 (f) Any information received verifying income eligibility  
 1208 and amount of medical assistance payments. Income information  
 1209 received from the Social Security Administration or the Internal  
 1210 Revenue Service must be safeguarded according to the  
 1211 requirements of the agency that furnished the data.

1212  
 1213 The exemption created by this subsection does not prohibit  
 1214 access to such information by a representative of the office  
 1215 ~~local long-term care ombudsman council~~ upon request, by a  
 1216 reviewing court if such information is required to be part of  
 1217 the record upon subsequent review, or as specified in s. 24(a),  
 1218 Art. I of the State Constitution.

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1219 Section 23. Subsection (2) of section 400.1413, Florida  
1220 Statutes, is amended to read:

1221 400.1413 Volunteers in nursing homes.—

1222 (2) This section does not affect the activities of the  
1223 ~~state or local long term care~~ ombudsman program councils  
1224 authorized under part I.

1225 Section 24. Paragraph (d) of subsection (5) of section  
1226 400.162, Florida Statutes, is amended to read:

1227 400.162 Property and personal affairs of residents.—

1228 (5)

1229 (d) If, at any time during the period for which a license  
1230 is issued, a licensee that has not purchased a surety bond or  
1231 entered into a self-insurance agreement, as provided in  
1232 paragraphs (b) and (c), is requested to provide safekeeping for  
1233 the personal funds of a resident, the licensee shall notify the  
1234 agency of the request and make application for a surety bond or  
1235 for participation in a self-insurance agreement within 7 days  
1236 after ~~of~~ the request, exclusive of weekends and holidays. Copies  
1237 of the application, along with written documentation of related  
1238 correspondence with an insurance agency or group, shall be  
1239 maintained by the licensee for review by the agency and the  
1240 office ~~state Nursing Home and Long Term Care Facility ombudsman~~  
1241 ~~Council~~.

1242 Section 25. Subsections (1) and (4) of section 400.19,  
1243 Florida Statutes, are amended to read:

1244 400.19 Right of entry and inspection.—

1245 (1) In accordance with part II of chapter 408, the agency  
1246 and any duly designated officer or employee thereof or a  
1247 representative member of the office ~~state Long Term Care~~

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1248 ~~ombudsman Council or the local long term care ombudsman council~~  
1249 shall have the right to enter upon and into the premises of any  
1250 facility licensed pursuant to this part, or any distinct nursing  
1251 home unit of a hospital licensed under chapter 395 or any  
1252 freestanding facility licensed under chapter 395 which that  
1253 provides extended care or other long-term care services, at any  
1254 reasonable time in order to determine the state of compliance  
1255 with ~~the provisions of~~ this part, part II of chapter 408, and  
1256 applicable rules in force pursuant thereto. The agency shall,  
1257 within 60 days after receipt of a complaint made by a resident  
1258 or resident's representative, complete its investigation and  
1259 provide to the complainant its findings and resolution.

1260 (4) The agency shall conduct unannounced onsite facility  
1261 reviews following written verification of licensee noncompliance  
1262 in instances in which the office ~~a long term care ombudsman~~  
1263 ~~council~~, pursuant to ss. 400.0071 and 400.0075, has received a  
1264 complaint and has documented deficiencies in resident care or in  
1265 the physical plant of the facility that threaten the health,  
1266 safety, or security of residents, or when the agency documents  
1267 through inspection that conditions in a facility present a  
1268 direct or indirect threat to the health, safety, or security of  
1269 residents. However, the agency shall conduct unannounced onsite  
1270 reviews every 3 months of each facility while the facility has a  
1271 conditional license. Deficiencies related to physical plant do  
1272 not require followup reviews after the agency has determined  
1273 that correction of the deficiency has been accomplished and that  
1274 the correction is of the nature that continued compliance can be  
1275 reasonably expected.

1276 Section 26. Subsection (1) of section 400.191, Florida

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1277 Statutes, is amended to read:

1278 400.191 Availability, distribution, and posting of reports  
1279 and records.—

1280 (1) The agency shall provide information to the public  
1281 about all of the licensed nursing home facilities operating in  
1282 the state. The agency shall, within 60 days after a licensure  
1283 inspection visit or within 30 days after any interim visit to a  
1284 facility, send copies of the inspection reports to the office  
1285 ~~local long-term care ombudsman council~~, the agency's local  
1286 office, and a public library or the county seat for the county  
1287 in which the facility is located. The agency may provide  
1288 electronic access to inspection reports as a substitute for  
1289 sending copies.

1290 Section 27. Subsection (6) and paragraph (c) of subsection  
1291 (7) of section 400.23, Florida Statutes, are amended to read:

1292 400.23 Rules; evaluation and deficiencies; licensure  
1293 status.—

1294 (6) ~~Before~~ Prior to conducting a survey of the facility,  
1295 the survey team shall obtain a copy of the office's ~~local long-~~  
1296 ~~term care ombudsman council~~ report on the facility. Problems  
1297 noted in the report shall be incorporated into and followed up  
1298 through the agency's inspection process. This procedure does not  
1299 preclude the office ~~local long-term care ombudsman council~~ from  
1300 requesting the agency to conduct a followup visit to the  
1301 facility.

1302 (7) The agency shall, at least every 15 months, evaluate  
1303 all nursing home facilities and make a determination as to the  
1304 degree of compliance by each licensee with the established rules  
1305 adopted under this part as a basis for assigning a licensure

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1306 status to that facility. The agency shall base its evaluation on  
1307 the most recent inspection report, taking into consideration  
1308 findings from other official reports, surveys, interviews,  
1309 investigations, and inspections. In addition to license  
1310 categories authorized under part II of chapter 408, the agency  
1311 shall assign a licensure status of standard or conditional to  
1312 each nursing home.

1313 (c) In evaluating the overall quality of care and services  
1314 and determining whether the facility will receive a conditional  
1315 or standard license, the agency shall consider the needs and  
1316 limitations of residents in the facility and the results of  
1317 interviews and surveys of a representative sampling of  
1318 residents, families of residents, representatives of the office  
1319 ~~ombudsman council members in the planning and service area in~~  
1320 ~~which the facility is located~~, guardians of residents, and staff  
1321 of the nursing home facility.

1322 Section 28. Paragraph (a) of subsection (3), paragraph (f)  
1323 of subsection (5), and subsection (6) of section 400.235,  
1324 Florida Statutes, are amended to read:

1325 400.235 Nursing home quality and licensure status; Gold  
1326 Seal Program.—

1327 (3) (a) The Gold Seal Program shall be developed and  
1328 implemented by the Governor's Panel on Excellence in Long-Term  
1329 Care which shall operate under the authority of the Executive  
1330 Office of the Governor. The panel shall be composed of three  
1331 persons appointed by the Governor, to include a consumer  
1332 advocate for senior citizens and two persons with expertise in  
1333 the fields of quality management, service delivery excellence,  
1334 or public sector accountability; three persons appointed by the

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1335 Secretary of Elderly Affairs, to include an active member of a  
 1336 nursing facility family and resident care council and a member  
 1337 of the University Consortium on Aging; a representative of the  
 1338 Office of State Long-Term Care Ombudsman; one person appointed  
 1339 by the Florida Life Care Residents Association; one person  
 1340 appointed by the State Surgeon General; two persons appointed by  
 1341 the Secretary of Health Care Administration; one person  
 1342 appointed by the Florida Association of Homes for the Aging; and  
 1343 one person appointed by the Florida Health Care Association.  
 1344 Vacancies on the panel shall be filled in the same manner as the  
 1345 original appointments.

1346 (5) Facilities must meet the following additional criteria  
 1347 for recognition as a Gold Seal Program facility:

1348 (f) Evidence that verified an outstanding record regarding  
 1349 the number and types of substantiated complaints reported to the  
 1350 Office of State Long-Term Care Ombudsman Council within the 30  
 1351 months preceding application for the program have been resolved  
 1352 or, if they have not been resolved, that the facility has made a  
 1353 good faith effort to resolve the complaints.

1354  
 1355 A facility assigned a conditional licensure status may not  
 1356 qualify for consideration for the Gold Seal Program until after  
 1357 it has operated for 30 months with no class I or class II  
 1358 deficiencies and has completed a regularly scheduled relicensure  
 1359 survey.

1360 (6) The agency, nursing facility industry organizations,  
 1361 consumers, Office of State Long-Term Care Ombudsman Council, and  
 1362 members of the community may recommend to the Governor  
 1363 facilities that meet the established criteria for consideration

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1364 for and award of the Gold Seal. The panel shall review nominees  
 1365 and make a recommendation to the Governor for final approval and  
 1366 award. The decision of the Governor is final and is not subject  
 1367 to appeal.

1368 Section 29. Present subsections (18) through (28) of  
 1369 section 415.102, Florida Statutes, are redesignated as  
 1370 subsections (19) through (29), respectively, and a new  
 1371 subsection (18) is added to that section, to read:

1372 415.102 Definitions of terms used in ss. 415.101-415.113.—  
 1373 As used in ss. 415.101-415.113, the term:

1374 (18) "Office" has the same meaning as in s. 400.0060.

1375 Section 30. Paragraph (a) of subsection (1) of section  
 1376 415.1034, Florida Statutes, is amended to read:

1377 415.1034 Mandatory reporting of abuse, neglect, or  
 1378 exploitation of vulnerable adults; mandatory reports of death.—

1379 (1) MANDATORY REPORTING.—

1380 (a) Any person, including, but not limited to, any:

- 1381 1. Physician, osteopathic physician, medical examiner,  
 1382 chiropractic physician, nurse, paramedic, emergency medical  
 1383 technician, or hospital personnel engaged in the admission,  
 1384 examination, care, or treatment of vulnerable adults;
- 1385 2. Health professional or mental health professional other  
 1386 than one listed in subparagraph 1.;
- 1387 3. Practitioner who relies solely on spiritual means for  
 1388 healing;
- 1389 4. Nursing home staff; assisted living facility staff;  
 1390 adult day care center staff; adult family-care home staff;  
 1391 social worker; or other professional adult care, residential, or  
 1392 institutional staff;

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1393 5. State, county, or municipal criminal justice employee or  
1394 law enforcement officer;

1395 6. ~~An~~ Employee of the Department of Business and  
1396 Professional Regulation conducting inspections of public lodging  
1397 establishments under s. 509.032;

1398 7. Florida advocacy council member or representative of the  
1399 Office of State Long-Term Care Ombudsman ~~council member~~; or

1400 8. Bank, savings and loan, or credit union officer,  
1401 trustee, or employee,

1402

1403 who knows, or has reasonable cause to suspect, that a vulnerable  
1404 adult has been or is being abused, neglected, or exploited shall  
1405 immediately report such knowledge or suspicion to the central  
1406 abuse hotline.

1407 Section 31. Subsection (1) of section 415.104, Florida  
1408 Statutes, is amended to read:

1409 415.104 Protective investigations of cases of abuse,  
1410 neglect, or exploitation of vulnerable adults; transmittal of  
1411 records to state attorney.—

1412 (1) The department shall, upon receipt of a report alleging  
1413 abuse, neglect, or exploitation of a vulnerable adult, begin  
1414 within 24 hours a protective investigation of the facts alleged  
1415 therein. If a caregiver refuses to allow the department to begin  
1416 a protective investigation or interferes with the conduct of  
1417 such an investigation, the appropriate law enforcement agency  
1418 shall be contacted for assistance. If, during the course of the  
1419 investigation, the department has reason to believe that the  
1420 abuse, neglect, or exploitation is perpetrated by a second  
1421 party, the appropriate law enforcement agency and state attorney

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1422 shall be orally notified. The department and the law enforcement  
1423 agency shall cooperate to allow the criminal investigation to  
1424 proceed concurrently with, and not be hindered by, the  
1425 protective investigation. The department shall make a  
1426 preliminary written report to the law enforcement agencies  
1427 within 5 working days after the oral report. The department  
1428 shall, within 24 hours after receipt of the report, notify the  
1429 appropriate Florida local advocacy council, or the office long-  
1430 term care ombudsman council, when appropriate, that an alleged  
1431 abuse, neglect, or exploitation perpetrated by a second party  
1432 has occurred. Notice to the Florida local advocacy council or  
1433 the office long term care ombudsman council may be accomplished  
1434 orally or in writing and shall include the name and location of  
1435 the vulnerable adult alleged to have been abused, neglected, or  
1436 exploited and the nature of the report.

1437 Section 32. Subsection (8) of section 415.1055, Florida  
1438 Statutes, is amended to read:

1439 415.1055 Notification to administrative entities.—

1440 (8) At the conclusion of a protective investigation at a  
1441 facility, the department shall notify ~~either~~ the Florida local  
1442 advocacy council or the office long term care ombudsman council  
1443 of the results of the investigation. This notification must be  
1444 in writing.

1445 Section 33. Subsection (2) of section 415.106, Florida  
1446 Statutes, is amended to read:

1447 415.106 Cooperation by the department and criminal justice  
1448 and other agencies.—

1449 (2) To ensure coordination, communication, and cooperation  
1450 with the investigation of abuse, neglect, or exploitation of

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1451 vulnerable adults, the department shall develop and maintain  
 1452 interprogram agreements or operational procedures among  
 1453 appropriate departmental programs and the Office of State Long-  
 1454 Term Care Ombudsman Council, the Florida Statewide Advocacy  
 1455 Council, and other agencies that provide services to vulnerable  
 1456 adults. These agreements or procedures must cover such subjects  
 1457 as the appropriate roles and responsibilities of the department  
 1458 in identifying and responding to reports of abuse, neglect, or  
 1459 exploitation of vulnerable adults; the provision of services;  
 1460 and related coordinated activities.

1461 Section 34. Paragraph (g) of subsection (3) of section  
 1462 415.107, Florida Statutes, is amended to read:

1463 415.107 Confidentiality of reports and records.—

1464 (3) Access to all records, excluding the name of the  
 1465 reporter which shall be released only as provided in subsection  
 1466 (6), shall be granted only to the following persons, officials,  
 1467 and agencies:

1468 (g) Any appropriate official of the Florida advocacy  
 1469 council or the office long-term care ombudsman council  
 1470 investigating a report of known or suspected abuse, neglect, or  
 1471 exploitation of a vulnerable adult.

1472 Section 35. Present subsections (16) through (26) of  
 1473 section 429.02, Florida Statutes, are redesignated as  
 1474 subsections (17) through (27), respectively, present subsections  
 1475 (11) and (20) are amended, and a new subsection (16) is added to  
 1476 that section, to read:

1477 429.02 Definitions.—When used in this part, the term:

1478 (11) "Extended congregate care" means acts beyond those  
 1479 authorized in subsection (17) ~~(16)~~ that may be performed

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1480 pursuant to part I of chapter 464 by persons licensed thereunder  
 1481 while carrying out their professional duties, and other  
 1482 supportive services which may be specified by rule. The purpose  
 1483 of such services is to enable residents to age in place in a  
 1484 residential environment despite mental or physical limitations  
 1485 that might otherwise disqualify them from residency in a  
 1486 facility licensed under this part.

1487 (16) "Office" has the same meaning as in s. 400.0060.

1488 (21) ~~(20)~~ "Resident's representative or designee" means a  
 1489 person other than the owner, or an agent or employee of the  
 1490 facility, designated in writing by the resident, if legally  
 1491 competent, to receive notice of changes in the contract executed  
 1492 pursuant to s. 429.24; to receive notice of and to participate  
 1493 in meetings between the resident and the facility owner,  
 1494 administrator, or staff concerning the rights of the resident;  
 1495 to assist the resident in contacting the office ombudsman  
 1496 council if the resident has a complaint against the facility; or  
 1497 to bring legal action on behalf of the resident pursuant to s.  
 1498 429.29.

1499 Section 36. Paragraph (b) of subsection (3) of section  
 1500 429.07, Florida Statutes, is amended to read:

1501 429.07 License required; fee.—

1502 (3) In addition to the requirements of s. 408.806, each  
 1503 license granted by the agency must state the type of care for  
 1504 which the license is granted. Licenses shall be issued for one  
 1505 or more of the following categories of care: standard, extended  
 1506 congregate care, limited nursing services, or limited mental  
 1507 health.

1508 (b) An extended congregate care license shall be issued to

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1509 facilities providing, directly or through contract, services  
 1510 beyond those authorized in paragraph (a), including services  
 1511 performed by persons licensed under part I of chapter 464 and  
 1512 supportive services, as defined by rule, to persons who would  
 1513 otherwise be disqualified from continued residence in a facility  
 1514 licensed under this part.

1515 1. In order for extended congregate care services to be  
 1516 provided, the agency must first determine that all requirements  
 1517 established in law and rule are met and must specifically  
 1518 designate, on the facility's license, that such services may be  
 1519 provided and whether the designation applies to all or part of  
 1520 the facility. Such designation may be made at the time of  
 1521 initial licensure or relicensure, or upon request in writing by  
 1522 a licensee under this part and part II of chapter 408. The  
 1523 notification of approval or the denial of the request shall be  
 1524 made in accordance with part II of chapter 408. Existing  
 1525 facilities qualifying to provide extended congregate care  
 1526 services must have maintained a standard license and may not  
 1527 have been subject to administrative sanctions during the  
 1528 previous 2 years, or since initial licensure if the facility has  
 1529 been licensed for less than 2 years, for any of the following  
 1530 reasons:

- 1531 a. A class I or class II violation;  
 1532 b. Three or more repeat or recurring class III violations  
 1533 of identical or similar resident care standards from which a  
 1534 pattern of noncompliance is found by the agency;  
 1535 c. Three or more class III violations that were not  
 1536 corrected in accordance with the corrective action plan approved  
 1537 by the agency;

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1538 d. Violation of resident care standards which results in  
 1539 requiring the facility to employ the services of a consultant  
 1540 pharmacist or consultant dietitian;

1541 e. Denial, suspension, or revocation of a license for  
 1542 another facility licensed under this part in which the applicant  
 1543 for an extended congregate care license has at least 25 percent  
 1544 ownership interest; or

1545 f. Imposition of a moratorium pursuant to this part or part  
 1546 II of chapter 408 or initiation of injunctive proceedings.

1547 2. A facility that is licensed to provide extended  
 1548 congregate care services shall maintain a written progress  
 1549 report on each person who receives services which describes the  
 1550 type, amount, duration, scope, and outcome of services that are  
 1551 rendered and the general status of the resident's health. A  
 1552 registered nurse, or appropriate designee, representing the  
 1553 agency shall visit the facility at least quarterly to monitor  
 1554 residents who are receiving extended congregate care services  
 1555 and to determine whether ~~if~~ the facility is in compliance with  
 1556 this part, part II of chapter 408, and relevant rules. One of  
 1557 the visits may be in conjunction with the regular survey. The  
 1558 monitoring visits may be provided through contractual  
 1559 arrangements with appropriate community agencies. A registered  
 1560 nurse shall serve as part of the team that inspects the  
 1561 facility. The agency may waive one of the required yearly  
 1562 monitoring visits for a facility that has been licensed for at  
 1563 least 24 months to provide extended congregate care services,  
 1564 if, during the inspection, the registered nurse determines that  
 1565 extended congregate care services are being provided  
 1566 appropriately, and if the facility has no class I or class II



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1567 violations and no uncorrected class III violations. The agency  
 1568 must first consult with the office long-term care ombudsman  
 1569 ~~council~~ for the area in which the facility is located to  
 1570 determine whether ~~if~~ any complaints have been made and  
 1571 substantiated about the quality of services or care. The agency  
 1572 may not waive one of the required yearly monitoring visits if  
 1573 complaints have been made and substantiated.

1574 3. A facility that is licensed to provide extended  
 1575 congregate care services must:

1576 a. Demonstrate the capability to meet unanticipated  
 1577 resident service needs.

1578 b. Offer a physical environment that promotes a homelike  
 1579 setting, provides for resident privacy, promotes resident  
 1580 independence, and allows sufficient congregate space as defined  
 1581 by rule.

1582 c. Have sufficient staff available, taking into account the  
 1583 physical plant and firesafety features of the building, to  
 1584 assist with the evacuation of residents in an emergency.

1585 d. Adopt and follow policies and procedures that maximize  
 1586 resident independence, dignity, choice, and decisionmaking to  
 1587 permit residents to age in place, so that moves due to changes  
 1588 in functional status are minimized or avoided.

1589 e. Allow residents or, if applicable, a resident's  
 1590 representative, designee, surrogate, guardian, or attorney in  
 1591 fact to make a variety of personal choices, participate in  
 1592 developing service plans, and share responsibility in  
 1593 decisionmaking.

1594 f. Implement the concept of managed risk.

1595 g. Provide, directly or through contract, the services of a

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1596 person licensed under part I of chapter 464.

1597 h. In addition to the training mandated in s. 429.52,  
 1598 provide specialized training as defined by rule for facility  
 1599 staff.

1600 4. A facility that is licensed to provide extended  
 1601 congregate care services is exempt from the criteria for  
 1602 continued residency set forth in rules adopted under s. 429.41.  
 1603 A licensed facility must adopt its own requirements within  
 1604 guidelines for continued residency set forth by rule. However,  
 1605 the facility may not serve residents who require 24-hour nursing  
 1606 supervision. A licensed facility that provides extended  
 1607 congregate care services must also provide each resident with a  
 1608 written copy of facility policies governing admission and  
 1609 retention.

1610 5. The primary purpose of extended congregate care services  
 1611 is to allow residents, as they become more impaired, the option  
 1612 of remaining in a familiar setting from which they would  
 1613 otherwise be disqualified for continued residency. A facility  
 1614 licensed to provide extended congregate care services may also  
 1615 admit an individual who exceeds the admission criteria for a  
 1616 facility with a standard license, if the individual is  
 1617 determined appropriate for admission to the extended congregate  
 1618 care facility.

1619 6. Before the admission of an individual to a facility  
 1620 licensed to provide extended congregate care services, the  
 1621 individual must undergo a medical examination as provided in s.  
 1622 429.26(4) and the facility must develop a preliminary service  
 1623 plan for the individual.

1624 7. When a facility can no longer provide or arrange for

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1625 services in accordance with the resident's service plan and  
 1626 needs and the facility's policy, the facility shall make  
 1627 arrangements for relocating the person in accordance with s.  
 1628 429.28(1)(k).

1629 8. Failure to provide extended congregate care services may  
 1630 result in denial of extended congregate care license renewal.

1631 Section 37. Subsection (9) of section 429.19, Florida  
 1632 Statutes, is amended to read:

1633 429.19 Violations; imposition of administrative fines;  
 1634 grounds.-

1635 (9) The agency shall develop and disseminate an annual list  
 1636 of all facilities sanctioned or fined for violations of state  
 1637 standards, the number and class of violations involved, the  
 1638 penalties imposed, and the current status of cases. The list  
 1639 shall be disseminated, at no charge, to the Department of  
 1640 Elderly Affairs, the Department of Health, the Department of  
 1641 Children and Families ~~Family Services~~, the Agency for Persons  
 1642 with Disabilities, the area agencies on aging, the Florida  
 1643 Statewide Advocacy Council, and the office state and local  
 1644 ~~ombudsman councils~~. The Department of Children and Families  
 1645 ~~Family Services~~ shall disseminate the list to service providers  
 1646 under contract to the department who are responsible for  
 1647 referring persons to a facility for residency. The agency may  
 1648 charge a fee commensurate with the cost of printing and postage  
 1649 to other interested parties requesting a copy of this list. This  
 1650 information may be provided electronically or through the  
 1651 agency's Internet site.

1652 Section 38. Subsection (8) of section 429.26, Florida  
 1653 Statutes, is amended to read:

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1654 429.26 Appropriateness of placements; examinations of  
 1655 residents.-

1656 (8) The Department of Children and Families ~~Family Services~~  
 1657 may require an examination for supplemental security income and  
 1658 optional state supplementation recipients residing in facilities  
 1659 at any time and shall provide the examination whenever a  
 1660 resident's condition requires it. Any facility administrator;  
 1661 personnel of the agency, the department, or the Department of  
 1662 Children and Families ~~Family Services~~; or representative of the  
 1663 Office of the State Long-Term Care Ombudsman ~~long-term care~~  
 1664 ~~ombudsman council member~~ who believes a resident needs to be  
 1665 evaluated shall notify the resident's case manager, who shall  
 1666 take appropriate action. A report of the examination findings  
 1667 shall be provided to the resident's case manager and the  
 1668 facility administrator to help the administrator meet his or her  
 1669 responsibilities under subsection (1).

1670 Section 39. Subsection (2) and paragraph (b) of subsection  
 1671 (3) of section 429.28, Florida Statutes, are amended to read:

1672 429.28 Resident bill of rights.-

1673 (2) The administrator of a facility shall ensure that a  
 1674 written notice of the rights, obligations, and prohibitions set  
 1675 forth in this part is posted in a prominent place in each  
 1676 facility and read or explained to residents who cannot read.  
 1677 This notice must ~~shall~~ include the statewide toll-free telephone  
 1678 number and e-mail address of the state ombudsman program and the  
 1679 telephone number of the name, address, and telephone numbers of  
 1680 ~~the local ombudsman council~~ and central abuse hotline and, when  
 1681 applicable, the Advocacy Center for Persons with Disabilities,  
 1682 Inc., and the Florida local advocacy council, where complaints

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1683 may be lodged. The facility must ensure a resident's access to a  
 1684 telephone to call the state local ombudsman program council, the  
 1685 central abuse hotline, the Advocacy Center for Persons with  
 1686 Disabilities, Inc., and the Florida local advocacy council.

1687 (3)

1688 (b) In order to determine whether the facility is  
 1689 adequately protecting residents' rights, the biennial survey  
 1690 shall include private informal conversations with a sample of  
 1691 residents and consultation with the state ombudsman program  
 1692 council in the planning and service area in which the facility  
 1693 is located to discuss residents' experiences within the  
 1694 facility.

1695 Section 40. Section 429.34, Florida Statutes, is amended to  
 1696 read:

1697 429.34 Right of entry and inspection.—In addition to the  
 1698 requirements of s. 408.811, a any duly designated officer or  
 1699 employee of the department, the Department of Children and  
 1700 Families Family Services, the Medicaid Fraud Control Unit of the  
 1701 Office of the Attorney General, the state or local fire marshal,  
 1702 or a representative member of the Office of the State Long-Term  
 1703 Care Ombudsman may state or local long-term care ombudsman  
 1704 council shall have the right to enter unannounced upon and into  
 1705 the premises of any facility licensed under pursuant to this  
 1706 part in order to determine the state of compliance with the  
 1707 provisions of this part, part II of chapter 408, and applicable  
 1708 rules. Data collected by the office state or local long-term  
 1709 care ombudsman councils or the state or local advocacy councils  
 1710 may be used by the agency in investigations involving violations  
 1711 of regulatory standards.

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

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1712 Section 41. Subsection (2) of section 429.35, Florida  
 1713 Statutes, is amended to read:

1714 429.35 Maintenance of records; reports.—

1715 (2) Within 60 days after the date of the biennial  
 1716 inspection visit required under s. 408.811 or within 30 days  
 1717 after the date of any interim visit, the agency shall forward  
 1718 the results of the inspection to the office local ombudsman  
 1719 council in whose planning and service area, as defined in part  
 1720 II of chapter 400, the facility is located; to at least one  
 1721 public library or, in the absence of a public library, the  
 1722 county seat in the county in which the inspected assisted living  
 1723 facility is located; and, when appropriate, to the district  
 1724 Adult Services and Mental Health Program Offices.

1725 Section 42. Subsection (6) of section 429.67, Florida  
 1726 Statutes, is amended to read:

1727 429.67 Licensure.—

1728 (6) In addition to the requirements of s. 408.811, access  
 1729 to a licensed adult family-care home must be provided at  
 1730 reasonable times for the appropriate officials of the  
 1731 department, the Department of Health, the Department of Children  
 1732 and Families Family Services, the agency, and the State Fire  
 1733 Marshal, who are responsible for the development and maintenance  
 1734 of fire, health, sanitary, and safety standards, to inspect the  
 1735 facility to assure compliance with these standards. In addition,  
 1736 access to a licensed adult family-care home must be provided at  
 1737 reasonable times to representatives of the Office of State for  
 1738 the local Long-Term Care Ombudsman council.

1739 Section 43. Subsection (2) of section 429.85, Florida  
 1740 Statutes, is amended to read:

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

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1741 429.85 Residents' bill of rights.-

1742 (2) The provider shall ensure that residents and their  
1743 legal representatives are made aware of the rights, obligations,  
1744 and prohibitions set forth in this part. Residents must also be  
1745 given the statewide toll-free telephone number and e-mail  
1746 address of the state ombudsman program and the telephone number  
1747 of names, addresses, and telephone numbers of the local  
1748 ombudsman council and the central abuse hotline where they may  
1749 lodge complaints.

1750 Section 44. Subsection (17) of section 744.444, Florida  
1751 Statutes, is amended to read:

1752 744.444 Power of guardian without court approval.-Without  
1753 obtaining court approval, a plenary guardian of the property, or  
1754 a limited guardian of the property within the powers granted by  
1755 the order appointing the guardian or an approved annual or  
1756 amended guardianship report, may:

1757 (17) Provide confidential information about a ward which  
1758 ~~that~~ is related to an investigation arising under part I of  
1759 chapter 400 to a representative of the Office of the State Long-  
1760 Term Care Ombudsman local or state ombudsman council member  
1761 conducting such an investigation. Any such ombudsman shall have  
1762 a duty to maintain the confidentiality of such information.

1763 Section 45. This act shall take effect July 1, 2014.



The Florida Senate

## Committee Agenda Request

**To:** Senator Denise Grimsley, Chair  
Appropriations Subcommittee on Health and Human Services

**Subject:** Committee Agenda Request

**Date:** April 1, 2014

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I respectfully request that **508**, relating to State Ombudsman Program, be placed on the:

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

A handwritten signature in black ink, reading "Nancy C. Detert".

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Senator Nancy C. Detert  
Florida Senate, District 28

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

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BILL: CS/SB 1646

INTRODUCER: Communications, Energy, and Public Utilities Committee; Health Policy Committee;  
and Senator Bean

SUBJECT: Telemedicine

DATE: April 8, 2014

REVISED: 04/11/14 \_\_\_\_\_

|    | ANALYST         | STAFF DIRECTOR  | REFERENCE  | ACTION                           |
|----|-----------------|-----------------|------------|----------------------------------|
|    | <u>Lloyd</u>    | <u>Stovall</u>  | <u>HP</u>  | <b>HP SPB 7128 as introduced</b> |
| 1. | <u>Caldwell</u> | <u>Caldwell</u> | <u>CU</u>  | <b>Fav/CS</b>                    |
| 2. | <u>Brown</u>    | <u>Pigott</u>   | <u>AHS</u> | <b>Fav/1 amendment</b>           |
| 3. | _____           | _____           | <u>AP</u>  | _____                            |

**Please see Section IX. for Additional Information:**

AMENDMENTS - Amendments were recommended

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**I. Summary:**

CS/SB 1646 creates the Florida Telemedicine Act (the act) and defines the key components for the practice of telemedicine. The act establishes telemedicine as the practice of medicine through advanced communications technology by a telemedicine provider at a distant site. A telemedicine provider is a physician or physician assistant licensed under ch. 458 or ch. 459, F.S., an advanced registered nurse practitioner licensed under ch. 464, F.S., or a pharmacist licensed under ch. 465, F.S., who provides telemedicine services or an out-of-state physician who meets the specific requirements for an exemption from Florida licensure.

The standard of care for telemedicine service coincides with health care services provided in-person. A controlled substance may not be prescribed through telemedicine for chronic non-malignant pain.

Regulatory boards, or the Department of Health (DOH) if there is not an applicable board, may adopt rules to administer the act. Rules prohibiting telemedicine that are inconsistent with this act must be repealed.

The bill's fiscal impact is indeterminate.

## II. Present Situation:

Telemedicine utilizes various advances in communication technology to provide health care services through a variety of electronic mediums. Telemedicine is not a separate medical specialty and does not change what constitutes proper medical treatment and services. According to the American Telemedicine Association, services provided through telemedicine include<sup>1</sup>:

- Primary care and specialist referral services that involve a primary care or allied health professional providing consultation with a patient or specialist assisting the primary care physician with a diagnosis;
- Remote patient monitoring that includes home telehealth, using devices to remotely collect and send data to home health agencies or remote diagnostic testing facilities;
- Consumer medical and health information that offers consumers specialized health information and online discussion groups for peer to peer support; and
- Medical education that provides continuing medical education credits.

The term telehealth is sometimes used interchangeably with telemedicine. Telehealth, however, generally refers to a wider range of health care services that may or may not include clinical services.<sup>2</sup> Telehealth often collectively defines the telecommunications equipment and technology that is used to collect and transmit the data for a telemedicine consultation or evaluation.

### Board of Medicine Rulemaking

Florida's Board of Medicine (Board) convened a Telemedicine Workgroup in 2013 to review its rules on telemedicine which had not been amended since 2003. The 2003 rules focused on standards for the prescribing of medicine via the Internet. Last month, the Board adopted new rules specific to standards for telemedicine practice for allopathic and osteopathic physicians. These new rules define telemedicine, establish a standard of care, prohibit the prescription of controlled substances, permit the establishment of a doctor-patient relationship via telemedicine, and exempt emergency medical services<sup>3</sup>.

### Telemedicine in Other States

As of January 2014, at least 20 states and the District of Columbia have mandated that private insurance plans cover telemedicine services at reimbursement rates equal to an in-person consultation.<sup>4</sup> Forty-four states reimburse under Medicaid for limited services, and some restrict

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<sup>1</sup> American Telemedicine Association, *What is Telemedicine?*, <http://www.americantelemed.org/learn/what-is-telemedicine> (last visited Jan. 6, 2014).

<sup>2</sup> Majerowicz, Anita; Tracy, Susan, "Telemedicine: Bridging Gaps in Healthcare Delivery," *Journal of AHIMA* 81, no. 5, (May 2010): 52-53, 56, [http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1\\_047324.hcsp?dDocName=bok1\\_047324](http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_047324.hcsp?dDocName=bok1_047324) (last visited Jan. 27, 2014).

<sup>3</sup> See Notice of Final Rule 64B8-9.0141, F.A.C., published February 20, 2014 and Notice of Final Rule 64B15-14.0081, F.A.C., published February 20, 2014. Both rules are effective March 12, 2014.

<sup>4</sup> American Telemedicine Association, *2014 State Telemedicine Legislative Tracking*, <http://www.americantelemed.org/docs/default-source/policy/state-telemedicine-legislation-matrix.pdf> (last visited Jan. 24, 2014).

reimbursement to only rural or low provider access areas.<sup>5</sup> The breadth of state telemedicine laws varies. While nine states specifically issue a special-telemedicine-only license or certificate, several others allow physicians from contiguous states to practice under certain conditions.<sup>6</sup>

Colorado and Wyoming have used telemedicine in correctional systems to eliminate the need to transport inmates.<sup>7</sup> In some cases, the health care professional is located in another location at the same facility and is able to interact with the inmate. This option addresses situations with violent inmates or handicap accessibility issues. Some jails use this same technology for online visits in place of face-to-face visitation, including the Alachua County jail in Florida.<sup>8</sup>

Rural counties have utilized telemedicine to fill the void for specialty care in their emergency rooms and to avoid costly and time-consuming transfers of patients from smaller hospitals to the larger tertiary centers for care. In a California project, rural hospital emergency rooms received video conference equipment to facilitate the telemedicine consultations. The rural hospital physicians and nurses were linked with pediatric critical care medicine specialists at the University of California, Davis.<sup>9</sup> Researchers at the university found that parents of children in the project reported significantly higher satisfaction and greater perception of the quality of care with telemedicine than with telephone guidance.<sup>10</sup>

### **Federal Provisions for Telemedicine**

Federal laws and regulations address telemedicine from several angles, from prescribing controlled substances and setting hospital emergency room guidelines, to establishing reimbursement guidelines for the Medicare program.

#### ***Prescribing Via the Internet***

Federal law specifically prohibits the prescribing of controlled substances via the Internet without an in-person evaluation. The federal regulation under 21 CFR §829 specifically states:

No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be delivered, distributed or dispensed by means of the Internet without a valid prescription.

A valid prescription is further defined under the same regulation as one issued by a practitioner who has conducted an in-person evaluation. The in-person evaluation requires that the patient be in the physical presence of the provider without regard to the presence or conduct of other

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<sup>5</sup> Id.

<sup>6</sup> Center for Connected Health Policy, *State Telehealth Laws and Reimbursement Policies*, (November 2013), p.6, <http://telehealthpolicy.us/sites/telehealthpolicy.us/files/uploader/50%20State%20Medicaid%20Update%20Nov.%202013%20-%20Rev.%2012-20.pdf> (last visited Jan. 24, 2014).

<sup>7</sup> Government Computing News, *Prisons Turn to Telemedicine for Treating Inmates*, (May 21, 2013), <http://gcn.com/blogs/pulse/2013/05/prisons-telemedicine-treating-inmates.aspx> (last visited Jan. 28, 2014)

<sup>8</sup> Gainesville, Sun, *Now You Can Visit an Inmate From Home*, (Jan. 9, 2014), <http://www.gainesville.com/article/20140109/ARTICLES/140109711?p=1&tc=pg#gsc.tab=0> (last visited Jan. 28, 2014).

<sup>9</sup> *In Rural ERs, Kids Get Better Care with Telemedicine*, <http://www.futurity.org/in-rural-ers-kids-get-better-care-with-telemedicine> (last visited Jan. 28, 2014).

<sup>10</sup> Id.



professionals.<sup>11</sup> However, the Ryan Haight Online Pharmacy Consumer Protection Act,<sup>12</sup> signed into law in October 2008, created an exception for the in-person medical evaluation for telemedicine practitioners. The practitioner is still subject to the requirement that all controlled substance prescriptions be issued for a legitimate purpose by a practitioner acting in the usual course of professional practice.

The Drug Enforcement Administration (DEA) of the federal Department of Justice issued its own definition of telemedicine in April 2009 as required under the Haight Act.<sup>13</sup> The federal regulatory definition of telemedicine under the DEA includes, but is not limited to, the following elements:

- The patient and the practitioner are located in separate locations;
- Patient and practitioner communicate via a telecommunications system;
- The practitioner must meet other registration requirements for the dispensing of controlled substance via the Internet; and
- Certain practitioners (Department of Veterans Affairs' employees, for example) or practitioners in certain situations (public health emergencies) may be exempted from registration requirements.<sup>14</sup>

### ***Medicare Coverage***

Specific telehealth services delivered at designated sites are covered under Medicare. Regulations of the federal Centers for Medicare and Medicaid Services require both a distant site (location of physician delivering the service via telecommunications) and a separate originating site (location of the patient) under their definition of telehealth. Asynchronous “store and forward” activities are reimbursed under Medicare only in federal demonstration projects.<sup>15</sup>

To qualify for Medicare reimbursement, the originating site must meet one of these qualifications:

- Be located in a federally defined rural county;
- Be designated rural health professional shortage area;<sup>16</sup> or,
- Be identified as a participant in a federal telemedicine demonstration project as of December 21, 2000.<sup>17</sup>

Federal requirements provide additional qualifications for an originating site after one of the initial elements above has been satisfied. An originating site must be one of the following location types as further defined in federal law and regulation:

- The office of a physician or practitioner;
- A critical access hospital;

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<sup>11</sup> 21 CFR §829(e)(2).

<sup>12</sup> Ryan Haight Online Consumer Protection Act of 2008, Public Law 110-425 (H.R. 6353).

<sup>13</sup> *Id.*, at sec. 3(j).

<sup>14</sup> 21 CFR §802(54).

<sup>15</sup> Only two states have a federal demonstration project that meets these qualifications, Hawaii and Alaska.

<sup>16</sup> The rural definition was expanded through a final federal regulation released on December 10, 2013 to include health professional shortage areas located in rural census tracts of urban areas as determined by the Office of Rural Health Policy. *See* 78 FR 74229, 74400-74402, 74812 (December 10, 2013).

<sup>17</sup> *See* 42 U.S.C. sec. 1395(m)(m)(4)(C)(i).

- A rural health clinic;
- A federally qualified health center;
- A hospital;
- A hospital-based or critical access hospital-based renal dialysis center (including satellites);
- A skilled nursing facility; or
- A community mental health center.<sup>18</sup>

Reimbursement for the distant site is established as “an amount equal to the amount that such physician or practitioner would have been paid under this title had such service been furnished without the use of a telecommunications system.”<sup>19</sup>

Federal law also provides for a facility fee for the originating site that started and remained at \$20 through December 31, 2002, and then, by law, is subsequently increased each year by the percentage increase in the Medicare Economic Index or MEI. For calendar year 2014, the originating fee was 80 percent of the lesser of the actual charge or \$24.63.<sup>20</sup>

Telehealth services covered under Medicare include professional consultations, office visits, and office psychiatry services within certain health care procedure codes.<sup>21</sup> Practitioners eligible to bill for telehealth services include physicians, nurse practitioners, physician assistants, nurse midwives, clinical nurse specialists, clinical psychologists, clinical social workers, and registered dietitians or nutrition specialists who are licensed to provide the service under state law.<sup>22</sup>

### **Telemedicine Services in Florida**

The University of Miami (UM) initiated telehealth services in 1973 and claims the first telehealth service in Florida, the first use of nurse practitioners in telemedicine in the nation, and the first telemedicine program in correctional facilities.<sup>23</sup> Today, UM has several initiatives in the areas of tele-dermatology, tele-trauma, humanitarian and disaster response relief telehealth, school telehealth services, and acute teleneurology or telestroke.<sup>24</sup> While some of the UM’s activities reach their local community, others reach outside of Florida including providing Haiti earthquake relief and tele-dermatology to cruise line employees. Telehealth communications are also used for monitoring patients in the hospital and conducting training exercises.

<sup>18</sup> See 42 U.S.C. sec. 1395(m)(m)(4)(C)(ii).

<sup>19</sup> See 42 U.S.C. sec. 1395(m)(m)(2)(A).

<sup>20</sup> Department of Health and Human Services, Centers for Medicare and Medicaid Services, *MLN Matters - News Flash #MM8533(December 20, 2013)*, <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/MM8533.pdf> (last visited: Jan 28, 2014).

<sup>21</sup> See 42 U.S.C. sec. (m)(m)(4)(F) for statutory authority and visit <http://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/> for additional federal guidance.

<sup>22</sup> Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Telehealth Services - Rural Health Fact Sheet Series*, December 2012, <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/telehealthsrvcfsht.pdf> (last visited Jan. 27, 2014).

<sup>23</sup> University of Miami, Miller School of Medicine, *UM Telehealth - Our History*, <http://telehealth.med.miami.edu/about-us/our-history> (last visited Jan. 31, 2014).

<sup>24</sup> University of Miami, Miller School of Medicine, *UM Telehealth*, <http://telehealth.med.miami.edu/featured/teledermatology> (last visited Jan. 28, 2014).

UM also utilizes telemedicine to research the effectiveness of telemedicine in different trauma situations with the United States military. The research utilizes a robot that is operated from a control station. The control station is on a laptop that allows the provider to operate the robot from any location with a wireless connection.<sup>25</sup> Lessons learned from this research are intended to provide assistance to deployed surgeons who treat injured soldiers on the battlefield.

UM, along with other designated trauma centers, participate in the Florida Emergency Trauma Telemedicine Network (FETTN). Coordinated by the Department of Health (DOH), the FETTN facilitates the treatment of trauma patients between trauma centers and community or rural hospitals.<sup>26</sup> The FETTN allows for multiple interface options, and currently seven of 25 trauma centers are part of the network.<sup>27</sup> In Fiscal Year 2011-2012, the seven Level I or Level II trauma centers that participated as a hub site, known as the location where the consulting physician is delivering the services, were Holmes Regional Medical Center, Tallahassee Memorial Hospital, Sacred Heart Hospital, University of Miami, Shands-Gainesville, Shands-Jacksonville, and Orlando Health.<sup>28</sup>

According to the DOH, the trauma centers and their satellites, as well as the rural hospitals that currently participate in the FETTN, are not reimbursed for the consultation and treatment services provided within the telemedicine network.

### ***Florida Medicaid Program***

Florida's Medicaid program reimburses for a limited number of telemedicine services by designated practitioners.<sup>29</sup> Audio-only, email messages, facsimile transmissions, or communications with an enrollee through another mechanism other than the spoke site, known as the site where the patient is located, are not covered under Florida Medicaid.

Telemedicine is currently covered by Medicaid for the following services and settings:<sup>30</sup>

- Behavioral Health
  - Tele-psychiatry services for psychiatric medication management by practitioners licensed under ch. 458 or ch. 459, F.S.
  - Tele-behavioral health services for individual and family behavioral health therapy services by qualified practitioners licensed under ch. 490 or chapter 491, F.S.
- Dental Services
  - Video conferencing between a registered dental hygienist employed by and under contract with a Medicaid-enrolled group provider and under the supervision of a supervising dentist.

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<sup>25</sup>University of Miami, Miller School of Medicine, *UM Telehealth - Teletrauma*, <http://telehealth.med.miami.edu/featured/teletrauma> (last visited Jan. 31, 2014).

<sup>26</sup>Florida Department of Health, *2014 Agency Legislative Bill Analysis of SB 70*, p.2, on file with the Senate Health Policy Committee (August 26, 2013).

<sup>27</sup>*Id.*, at 3.

<sup>28</sup>Florida Department of Health, *Long Range Program Plan* (September 28, 2012), on file with the Senate Health Policy Committee.

<sup>29</sup>Agency for Health Care Administration, *Highlights of Practitioner Services Coverage and Limitations Handbook Presentation*, Bureau of Medicaid Services, Summer 2013, p.30.

<sup>30</sup>Agency for Health Care Administration, *2014 Legislative Bill Analysis of SB 70*, November 7, 2013, p. 3, on file with the Senate Health Policy Committee.

- Services include oral prophylaxis, topical fluoride, and oral hygiene instructions.
- Physician Services
  - Services provided using audio and video equipment that allow for two-way, real-time interactive communication between physician and patient.
  - A state plan waiver specifically authorizes reimbursement for specialty physician services for the Children’s Medical Services Network (CMS Network).<sup>31</sup>
  - Physicians may bill for consultation services provided only via telemedicine.

The distant or hub site, where the provider is located, is eligible for reimbursement; the spoke site, where the patient is located, is not eligible for reimbursement unless a separate service is performed on the same day. Medicaid also requires that the referring physician and the patient be present during the consultation.<sup>32</sup>

Medicaid requires the following specific clinical records documentation to qualify for reimbursement as a telemedicine service:<sup>33</sup>

- A brief explanation of why services were not provided face-to-face;
- Documentation of telemedicine services, including results of assessment; and
- A signed statement from the patient (or parent or guardian, if a the patient is a child), indicating their choice to receive services through telemedicine.

Medicaid services are reimbursable only in the hospital outpatient, inpatient, and physician office settings. During the 2013 Legislative Session, Medicaid provider enrollment requirements were revised to allow the enrollment of physicians actively licensed in Florida to interpret diagnostic testing results through telecommunications and information technology provided from a distance.<sup>34</sup>

Since 2006, the CMS Network has been authorized to provide specified telemedicine services under Florida’s 1915(b) Medicaid Managed Care waiver. Authorized services include physician office visits (evaluation and management services) and consultation services already covered by the Medicaid state plan in select rural counties. Currently, the CMS Network provides telemedicine services in 57 of Florida’s 67 counties.<sup>35</sup>

The CMS Network works with the University of Florida’s (UF) pediatric endocrinology staff to provide telehealth services for enrollees with diabetes and other endocrinology diseases in the Daytona Beach service area.<sup>36</sup> Additional partnerships with the Institute for Child Health Policy

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<sup>31</sup> The Children’s Medical Services program is established within the Department of Health pursuant to ch. 391, F.S. The program is designed to provide children who have chronic health care needs with a family-centered, comprehensive, coordinated, and statewide managed system of care that links community-based health care with multidisciplinary, regional, and tertiary pediatric specialty care.

<sup>32</sup> Agency for Health Care Administration, *supra*, note 29, at 34.

<sup>33</sup> *Id.* at p. 36.

<sup>34</sup> See Chapter 2013-150, L.O.F., sec. 1.

<sup>35</sup> Florida Department of Health, *supra*, note 28, at 2.

<sup>36</sup> Florida Department of Health, *Maternal and Child Health Block Grant Narrative for 2013*, <http://www.floridahealth.gov/healthy-people-and-families/womens-health/pregnancy/mch-fl-2013-1narrative.pdf>, p.21, (last visited: Jan. 31, 2014).

at UF include referring children with special health care needs to community health centers for consults via telehealth for nutritional, neurological, and orthopedics in Southeast Florida.<sup>37</sup>

### ***Child Protection Teams***

The Child Protection Team (CPT) program under the CMS Network utilizes a telemedicine network to perform child assessments. The CPT is a medically directed multi-disciplinary program that works with local Sheriff's offices and the Department of Children and Families in cases of child abuse and neglect to supplement investigative activities.<sup>38</sup> The CPT patient is seen at a remote site and a registered nurse assists with the medical exam. A physician or Advanced Registered Nurse Practitioner (ARNP) is located at the hub site and has responsibility for directing the exam.

Hub sites are comprehensive medical facilities that offer a wide range of medical and interdisciplinary staff, whereas the remote sites tend to be smaller facilities that may lack medical diversity. In 2013, CPT telehealth services were available at 14 sites and 437 children were provided medical or other assessments via telemedicine technology.<sup>39</sup>

### ***Other Department of Health Initiatives***

The DOH utilizes tele-radiology through the Tuberculosis (TB) Physician's Network.<sup>40</sup> The ability to read electronic chest X-rays remotely can lead to a faster diagnosis, treatment, and a reduction in the spread of the disease, according to the DOH. This service is not currently reimbursed by Medicaid.

### **Compliance with Health Insurance Portability and Accountability Act (HIPAA)**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information (PHI). Privacy rules were initially issued in 2000 by the federal Department of Health and Human Services and later modified in 2002. These rules address the use and disclosure of an individual's health information as well as create standards for privacy rights. Additional privacy and security measures were adopted in 2009 with the Health Information Technology for Economic Clinical Health (HITECH) Act.

Only certain entities are subject to HIPAA's provisions. These "covered entities" include:

- Health plans;
- Health care providers;
- Health care clearinghouses; and
- Business Associates.

While not a covered entity as an individual, the patient still maintains his or her privacy and confidentiality rights regardless of the method in which the medical service is delivered. The

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<sup>37</sup> Id.

<sup>38</sup> Florida Department of Health, *Child Protection Teams*, [http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child\\_protection\\_safety/child\\_protection\\_teams.html](http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html) (last visited Jan. 7, 2014).

<sup>39</sup> Florida Department of Health, *supra* note 35, at 21.

<sup>40</sup> Florida Department of Health, *supra* note 26, at 2.

HITECH Act specifically identified telemedicine as an area for review and consideration and funding was provided, in part, to strengthen infrastructure and tools to promote telemedicine.<sup>41</sup>

Under the provisions of HIPAA and the HITECH Act, a health care provider or other covered entity participating in telemedicine is required to meet the same technical and physical HIPAA and HITECH requirements as would be required for a physical office visit. These requirements include ensuring that the equipment and technology is HIPAA compliant.

### III. Effect of Proposed Changes:

**Section 1** designates ss. 456.4501-456.4506, F.S., as the “Florida Telemedicine Act.”

**Section 2** creates s. 456.4502, F.S., and provides definitions for the terms used in the Florida Telemedicine Act, including:

- Act;
- Advanced Communications Technology;
- Distant Site;
- Encounter;
- Health Care Provider;
- In Person;
- Originating Site;
- Patient Presenter;
- Store and forward;
- Telehealth;
- Telemedicine; and
- Telemedicine provider.

The term “telemedicine provider” means a physician or physician assistant licensed under ch. 458 or ch. 459, F.S., an advanced registered nurse practitioner licensed under ch. 464, F.S., or a pharmacist licensed under ch. 465, F.S., who provides telemedicine services.

**Section 3** creates s. 456.4503, F.S., and establishes requirements for providers who provide telemedicine across state lines to a patient physically located in Florida.

The bill provides that an out-of-state physician, physician assistant, advanced registered nurse practitioner, or pharmacist who provides telemedicine across state lines to a patient physically located in Florida must meet the definition of a “telemedicine provider,” which requires the provider to be licensed in Florida. However, the bill provides that an out-of-state physician, physician assistant, advanced registered nurse practitioner, or pharmacist is exempt from the Florida licensure requirement if he or she is consulting with a telemedicine provider who is licensed to practice in Florida and if the telemedicine provider licensed in Florida retains ultimate authority and responsibility for the diagnosis, treatment, and care of the patient located in this state.

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<sup>41</sup> Public Law 111-5, sec. 3002(b)(2)(C)(iii) and sec. 3011(a)(4).

The bill provides another exemption to out-of-state physicians. An out-of-state physician is exempt from the Florida licensure requirement if the physician:

- Holds an unrestricted active license to practice allopathic or osteopathic medicine in the distant site and that state's licensure requirements meet or exceed Florida's requirements;
- Maintains professional liability coverage that includes telemedicine that is consistent with s. 458.320, F.S., and appropriate to the physician's scope of practice and location;
- Has one of the following:
  - Privileges at an out-of-state hospital that is affiliated with a Florida hospital licensed under chapter 395, F.S.;
  - A position on the medical staff of an out-of-state hospital that is affiliated with a Florida hospital licensed under chapter 395, F.S.; or
  - Affiliation with an out-of-state health insurer or health plan that is also authorized to conduct business in Florida under chapter 627, F.S., or chapter 641, F.S.; and
- Practices in a state that authorizes Florida-licensed physicians to provide telemedicine services to patients in that state without having to be licensed to practice medicine in that state.

An out-of-state physician who provides telemedicine services to a patient in Florida is subject to disciplinary action by the Florida Board of Medicine, the Board of Osteopathic Medicine, or a regulatory entity that has jurisdiction over the hospital, insurer, or health plan affiliated with the physician. The physician and the hospital, insurer, or health plan of the affiliated physician, physician assistant, advanced registered nurse practitioner, or pharmacist must agree to make available any pertinent records upon the request of the applicable board, the DOH, or any other federal or state regulatory authority. Failure to comply with a records request may result in revocation of the out-of-state practitioner's license or a fine, as established by the appropriate board or the DOH, as applicable.

A health care provider or patient presenter using telemedicine technology at the direction and supervision of a physician may not be interpreted as practicing medicine without a license. Providers, however, are required to be trained and knowledgeable about the equipment being used. Failure to acquire appropriate training and knowledge is grounds for disciplinary action. Upon license renewal, a physician practicing telemedicine must identify himself or herself as a telemedicine provider on the physician's practitioner profile and submit proof of the successful completion of a course and subsequent examination, on the standards of practice in telemedicine. The act requires that the board-approved course consist of at least two web-based contact hours and the first course must be offered by July 1, 2014.

Venue for any civil or administrative action initiated by a telemedicine recipient or the appropriate regulatory board is based on the location of the patient or must be in Leon County.

The regulatory boards, or the DOH if there is no board, may adopt rules to implement this act and are directed to repeal any rules that prohibit the practice of telemedicine. The boards may also adopt rules regarding patient presenters but may not require the use of a presenter, if special skills and training are not needed for the patient to participate in the encounter.

**Section 4** creates s. 456.4504, F.S., to specify standards for the delivery of telemedicine services. The standard of care for the delivery of telemedicine services shall be the same as if the services were delivered in person.

The bill references the standard of care in s. 766.102, F.S. That section of law addresses medical negligence and provides that:

The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

The telemedicine provider is responsible for the quality of the telemedicine equipment and technology and its safe use. Telemedicine equipment must be able to provide the same information, at a minimum, that would have been obtained in an in-person encounter. The equipment and technology must enable the telemedicine provider to meet or exceed the prevailing standard of care for the practitioner's profession.

The telemedicine provider is not required to conduct a patient history or physical exam before the telemedicine encounter as long as the telemedicine evaluation meets the prevailing standard of care for the services provided.

The act prohibits prescribing a legend drug<sup>42</sup> based solely on an electronic questionnaire without a visual examination. Additionally, a practitioner may not prescribe a controlled substance through the use of telemedicine for chronic non-malignant pain.

Medical record-keeping requirements must be of the same manner as an in-person encounter under federal and state law. All records generated must conform to confidentiality and record-keeping laws of this state, regardless of the patient's location. Telemedicine technology must be encrypted and include a record-keeping program to verify each interaction.

If a third party vendor is used by a telemedicine provider, a business associate agreement is required. The act requires that the third party vendor comply with the HITECH Act.

**Section 5** creates s. 456.4505, F.S., to provide standards for the provision of telemedicine services to diagnose or treat the human eye and its appendages. Automated equipment may be utilized for telemedicine services to diagnose or treat the human eye if the following requirements are met:

- The automated equipment is approved by the United States Food and Drug Administration for the intended use;
- The automated equipment is designed and operated to accommodate any requirements of the federal ADA Amendments Act of 2008;

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<sup>42</sup> Section 465.003(8), F.S., provides that "medicinal drugs" or "drugs" means those substances or preparations commonly known as "prescription" or "legend" drugs which are required by federal or state law to be dispensed only on a prescription, but shall not include patents or proprietary preparations as hereafter defined.



- The automated equipment and accompanying technology gathers and transmits information in compliance with HIPAA;
- The procedures for which the automated equipment is used has a recognized Current Procedural Terminology (CPT) code approved by the Centers for Medicare and Medicaid Services;
- The physical location of the automated equipment prominently displays the name and location of the individual that will read and interpret the information and data;
- The diagnostic information and data gathered by the automated equipment will be read and interpreted by an optometrist licensed under ch. 463, F.S., or a physician skilled in diseases of the human eye and licensed under ch. 458 or ch. 459, F.S.; and
- The owner or lessee of the automated equipment maintains liability insurance in amounts adequate to cover claims by individuals diagnosed or treated based on information and data generated by the automated equipment.

A prescription for spectacles or contact lenses may not be made based on telemedicine services or based solely on the refractive error of the human eye generated by a computer controlled device.

**Section 6** creates s. 456.4506, F.S., to establish a requirement for the AHCA to reimburse for telemedicine services under Medicaid. Telemedicine services are to be reimbursed in the same manner and in an equivalent amount to Medicaid services provided in-person under parts III (Medicaid) and IV (Medicaid Managed Care) of ch. 409, F.S. An exception to this requirement is provided if the AHCA determines a service that is delivered through telemedicine is not cost effective or does not meet the clinical needs of recipients. If, after implementation, the AHCA documents this determination, then coverage for that particular service may be discontinued.

Before receipt of a telemedicine service, a Medicaid recipient or legal representative of the recipient must provide informed consent for telemedicine services. The recipient must be provided the opportunity to receive the same service through an in-person encounter.

The reimbursement amount for Medicaid services delivered via telemedicine is negotiable between the parties; however, both the originating site and distant site should receive compensation based on the services rendered.

The AHCA is also required to submit a usage and cost report on telemedicine services in the Medicaid program. The report is due to the president of the Senate, the speaker of the House of Representatives, and the legislative minority leaders by January 1, 2017.

Under the bill, s. 456.4506, F.S., sunsets on June 30, 2017.

**Section 7** amends s. 409.967(2)(c), F.S., to provide that a managed care plan may not use a telemedicine provider to meet the requirement that the plan maintain a nationwide network of providers in sufficient numbers to meet access standards for specific medical services for all recipients enrolled in the plan, unless the provider is licensed under ch. 458 or ch. 459, F.S.

**Sections 8 and 9** amend ss. 627.645(3) and 641.185(1), F.S., to prohibit the denial of a claim for payment under a health insurance policy or a health maintenance organization on the basis of a

medical necessity determination conducted via telemedicine unless the determination is made by a physician licensed under ch. 458 or ch. 459, F.S.

**Section 10** provides an effective date of October 1, 2014.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Telemedicine services are currently available in Florida. Health care technology companies that provide the equipment for these services may see an increase in demand from health care practitioners for new equipment and maintenance needs of any existing equipment.

C. Government Sector Impact:

In its analysis of SB 70,<sup>43</sup> which has similar provision for telemedicine coverage of Medicaid services, the Agency for Health Care Administration (AHCA) provided an indeterminate fiscal impact because the rulemaking authorized under SB 70 is delegated to the Department of Health (DOH), and both the costs and savings would be associated with that bill's provisions. The expected savings were based on possible efficiencies, improvements in disease management, and improved patient outcomes that resulted from telemedicine services.<sup>44</sup>

An increase in the services covered by telemedicine could lead to an indeterminate increase in utilization and costs. SB 1646 broadens the number of services available through telemedicine.<sup>45</sup>

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<sup>43</sup> SB 70 is in the Health Policy Committee as of April 7, 2014.

<sup>44</sup> Agency for Health Care Administration, *supra*, note 30, at 7.

<sup>45</sup> *Id.*, p. 8.

**VI. Technical Deficiencies:**

The terms “emergency services and care” and “emergency medical conditions” are defined in s. 456.4503(6), F.S., but are not used in the bill.<sup>46</sup> This issue is addressed in amendment barcode 651910, as amended, which was adopted by the Appropriations Subcommittee on Health and Human Services on April 9, 2014.

The act does not take effect until October 1, 2014, yet the telemedicine course is required to be offered by July 1, 2014 (s. 456.4503(8)(b)).<sup>47</sup>

**VII. Related Issues:**

There are numerous other sections of state law that refer to “in person” or “face to face” requirements for certain medical services or health care related activities. While SB 1646 defines “in person” for purposes of the Florida Telemedicine Act, there are other usages of this phrase in statute.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 456.4501, 456.4502, 456.4503, 456.4504, 456.4505, and 456.4506

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

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

**CS by Communications, Energy, and Public Utilities on April 1, 2014:**

CS/SB 1646 provides that:

- Only a Florida licensed physician can deny a telemedicine encounter claim from Florida.
- Insurance claims for payment for a telemedicine encounter under a health insurance policy or a health maintenance organization may only be denied by a Florida licensed physician.
- Expands definition of telemedicine provider to include physician assistants, advanced registered nurse practitioners, or a pharmacist.
- Modifies other references to telemedicine practitioners in the Florida Telemedicine Act to incorporate these providers and their boards.
- Requires Florida license with exceptions for:
  - Consulting with a Florida licensed provider who holds the ultimate authority.
  - Consulting on an emergency basis.
- Requires that pertinent records be made available upon request of the state or affiliated organization responsible for providers.

<sup>46</sup> At line 172 and 173 of CS/SB1646.

<sup>47</sup> At line 194 of CS/SB 1646.

**B. Amendments:****Barcode 651910 by Appropriations Subcommittee on Health and Human Services on April 9, 2014 (as amended by barcode 259150):**

The amendment, as amended:

- Deletes the provisions of CS/SB 1646 that exempt certain out-of-state physicians from the requirement that a physician who provides telemedicine across state lines to a patient physically located in Florida have a Florida license to practice medicine;
- Defines “emergency basis” for purposes of the licensing exemption for consultations that occur on an emergency basis via telemedicine; and
- Requires that a telemedicine provider maintain professional liability coverage that includes coverage for telemedicine services in an amount and manner consistent with s. 458.320(1)(b), F.S., or s. 459.0085(1)(b), F.S., or in the amount required by the applicable law in an out-of-state telemedicine provider’s licensing jurisdiction, whichever is greater.



651910

LEGISLATIVE ACTION

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Appropriations Subcommittee on Health and Human Services  
(Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 131 - 217  
and insert:

(3) Consultations that occur on an emergency basis and that are conducted via telemedicine are exempt from subsection (1). As used in this paragraph the term "emergency basis" refers to the provision of "emergency services and care" for an "emergency medical condition" as those terms are defined in s. 395.002."

(4) A telemedicine provider must maintain professional



651910

11 liability coverage that includes coverage for telemedicine  
12 services in an amount and manner consistent with s.  
13 458.320(1)(b) or in the amount required by the applicable law in  
14 an out-of-state telemedicine provider's licensing jurisdiction,  
15 whichever is greater.

16 (5) A health care provider or patient presenter acting  
17 under the direction and supervision of a telemedicine provider  
18 through the use of telemedicine may not be interpreted as  
19 practicing without a license. However, the health care provider  
20 must be trained in, educated on, and knowledgeable about the  
21 procedure and technology and may not perform duties for which he  
22 or she does not have sufficient training, education, and  
23 knowledge. Failure to have adequate training, education, and  
24 knowledge is grounds for disciplinary action by the appropriate  
25 board, or the department if there is no board, or the affiliated  
26 regulatory entity for affiliated providers.

27 (6) Upon license renewal, a physician, physician assistant,  
28 advanced registered nurse practitioner, or pharmacist practicing  
29 telemedicine shall:

30 (a) Designate himself or herself as a telemedicine provider  
31 on the practitioner profile; and

32 (b) Submit proof of successful completion of a course and  
33 subsequent examination, approved by the board, on the standards  
34 of practice in telemedicine. The course must consist of 2 web-  
35 based contact hours. The first course and examination shall be  
36 offered by July 1, 2014, and conducted at least annually  
37 thereafter. The course and examination shall be developed and  
38 offered by a statewide professional association accredited to  
39 provide educational activities as designated by the board. The



651910

40 board shall review and approve the content of the initial course  
41 and examination if the board determines that the course and  
42 examination adequately and reliably satisfy the criteria  
43 specified in this section. Annually thereafter, the board shall  
44 review the course and examination and, if the board determines  
45 that the content continues to adequately and reliably satisfy  
46 the criteria specified in this section, approve them. Successful  
47 completion of the board-approved course and examination may be  
48 used to satisfy 2 hours of continuing education requirements for  
49 the biennial period during which the board-approved course and  
50 examination are taken. A physician, physician assistant,  
51 advanced registered nurse practitioner, or pharmacist who does  
52 not complete a board-approved course and examination under this  
53 section may not provide telemedicine services.

54 (7) Venue for a civil or administrative action initiated by  
55 the telemedicine recipient, the department, or the appropriate  
56 board shall be based on the location of the patient or shall be  
57 in Leon County.

58 (8) The boards may adopt rules to administer the

59  
60 ===== T I T L E A M E N D M E N T =====

61 And the title is amended as follows:

62 Delete lines 9 - 11

63 and insert:

64 and consultations; requiring telemedicine providers to  
65 maintain professional liability coverage for  
66 telemedicine services;



259150

LEGISLATIVE ACTION

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Appropriations Subcommittee on Health and Human Services  
(Garcia) recommended the following:

1           **Senate Amendment to Amendment (651910)**  
2  
3           Delete line 13  
4           and insert:  
5           458.320(1)(b) or s. 459.0085(1)(b), or in the amount required by  
6           the applicable law in





387622

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Appropriations Subcommittee on Health and Human Services  
(Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 131 - 217  
and insert:

(3) Consultations that occur on an emergency basis and that are conducted via telemedicine are exempt from subsection (1). As used in this paragraph the term "emergency basis" refers to the provision of "emergency services and care" for an "emergency medical condition" as those terms are defined in s. 395.002.

(4) A telemedicine provider must maintain professional



387622

11 liability coverage that includes coverage for telemedicine  
12 services in an amount and manner consistent with s.  
13 458.320(1)(b) or s. 459.0085(1)(b), or in the amount required by  
14 the applicable law in an out-of-state telemedicine provider's  
15 licensing jurisdiction, whichever is greater.

16 (5) A health care provider or patient presenter acting  
17 under the direction and supervision of a telemedicine provider  
18 through the use of telemedicine may not be interpreted as  
19 practicing without a license. However, the health care provider  
20 must be trained in, educated on, and knowledgeable about the  
21 procedure and technology and may not perform duties for which he  
22 or she does not have sufficient training, education, and  
23 knowledge. Failure to have adequate training, education, and  
24 knowledge is grounds for disciplinary action by the appropriate  
25 board, or the department if there is no board, or the affiliated  
26 regulatory entity for affiliated providers.

27 (6) Upon license renewal, a physician, physician assistant,  
28 advanced registered nurse practitioner, or pharmacist practicing  
29 telemedicine shall:

30 (a) Designate himself or herself as a telemedicine provider  
31 on the practitioner profile; and

32 (b) Submit proof of successful completion of a course and  
33 subsequent examination, approved by the board, on the standards  
34 of practice in telemedicine. The course must consist of 2 web-  
35 based contact hours. The first course and examination shall be  
36 offered by July 1, 2014, and conducted at least annually  
37 thereafter. The course and examination shall be developed and  
38 offered by a statewide professional association accredited to  
39 provide educational activities as designated by the board. The



387622

40 board shall review and approve the content of the initial course  
41 and examination if the board determines that the course and  
42 examination adequately and reliably satisfy the criteria  
43 specified in this section. Annually thereafter, the board shall  
44 review the course and examination and, if the board determines  
45 that the content continues to adequately and reliably satisfy  
46 the criteria specified in this section, approve them. Successful  
47 completion of the board-approved course and examination may be  
48 used to satisfy 2 hours of continuing education requirements for  
49 the biennial period during which the board-approved course and  
50 examination are taken. A physician, physician assistant,  
51 advanced registered nurse practitioner, or pharmacist who does  
52 not complete a board-approved course and examination under this  
53 section may not provide telemedicine services.

54 (7) Venue for a civil or administrative action initiated by  
55 the telemedicine recipient, the department, or the appropriate  
56 board shall be based on the location of the patient or shall be  
57 in Leon County.

58 (8) The boards may adopt rules to administer the

59  
60 ===== T I T L E A M E N D M E N T =====

61 And the title is amended as follows:

62 Delete lines 9 - 11

63 and insert:

64 and consultations; requiring telemedicine providers to  
65 maintain professional liability coverage for  
66 telemedicine services;



449942

LEGISLATIVE ACTION

| Senate      | . | House |
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Appropriations Subcommittee on Health and Human Services (Bean)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 456.4501, Florida Statutes, is created  
to read:

456.4501 Short title.—Sections 456.4501-456.4506 may be  
cited as the “Florida Telemedicine Act.”

Section 2. Section 456.4502, Florida Statutes, is created  
to read:



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11 456.4502 Definitions.—As used in this act, the term:

12 (1) "Act" means the Florida Telemedicine Act.

13 (2) "Advanced communications technology" means:

14 (a) Compressed digital interactive video, audio, or data  
15 transmissions;

16 (b) Real-time synchronous video- or web-conferencing  
17 communications;

18 (c) Secure web-based communications;

19 (d) Still-image capture or asynchronous store and forward;

20 (e) Health care service transmissions supported by mobile  
21 devices (mHealth); or

22 (f) Other technology that facilitates access to health care  
23 services or medical specialty expertise.

24 (3) "Distant site" means the location at which the  
25 telemedicine provider delivering the health care service is  
26 located at the time the service is provided via telemedicine.

27 (4) "Encounter" means an examination, consultation,  
28 monitoring, or other health care service.

29 (5) "Health care provider" means a health care practitioner  
30 or out-of-state licensed individual who provides health care  
31 services within the scope of his or her professional license.

32 (6) "In person" means that a patient is in the physical  
33 presence of the health care provider without regard to whether  
34 portions of the encounter are conducted by other providers.

35 (7) "Originating site" means the location of the patient  
36 receiving telemedicine services, which site meets the standards  
37 of this act as verified by the telemedicine provider.

38 (8) "Patient presenter" means an individual who has  
39 clinical background training in the use of advanced



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40 communications technology equipment and who is available at the  
41 originating site to present the patient, manage the cameras or  
42 equipment, and perform any hands-on activity necessary to  
43 successfully complete the telemedicine encounter under the  
44 direction and supervision of a telemedicine provider.

45 (9) "Store and forward" means the type of telemedicine  
46 encounter that uses still images of patient data for rendering a  
47 medical opinion or diagnosis. The term includes the asynchronous  
48 transmission of clinical data from one site to another.

49 (10) "Telehealth" means the use of advanced communications  
50 technology to provide access to health assessment, diagnosis,  
51 intervention, consultation, supervision, and information across  
52 distances. The term includes the use of remote patient-  
53 monitoring devices that are used to collect and transmit data  
54 for telemonitoring and interpretation.

55 (11) "Telemedicine" means the use of advanced  
56 communications technology by a telemedicine provider at a  
57 distant or originating site in compliance with federal and state  
58 privacy and confidentiality requirements and encryption  
59 standards. Services provided through telemedicine may include  
60 patient assessment, diagnosis, consultation, treatment,  
61 prescription of medicine, transfer of medical data, or other  
62 medical-related services. The term does not include audio-only  
63 calls, e-mail messages, or facsimile transmissions. Telemedicine  
64 includes telehealth and telemonitoring.

65 (12) "Telemedicine provider" means a health care  
66 practitioner licensed or certified in this state who provides  
67 telemedicine services.

68 Section 3. Section 456.4503, Florida Statutes, is created



449942

69 to read:

70 456.4503 Telemedicine requirements.-

71 (1) A health care provider who provides telemedicine across  
72 state lines to a patient physically located in this state must  
73 be licensed or certified in this state.

74 (2) An out-of-state health care provider is exempt from  
75 subsection (1) if:

76 (a) The out-of-state health care provider is consulting  
77 with a telemedicine provider licensed to practice in this state;

78 (b) The telemedicine provider licensed in this state  
79 retains ultimate authority and responsibility for the diagnosis,  
80 treatment, and care of the patient located within this state;  
81 and

82 (c) The out-of-state health care provider has privileges at  
83 or is on the medical staff of an out-of-state hospital  
84 affiliated with a Florida hospital licensed under chapter 395,  
85 or has an affiliation with an out-of-state health insurer or  
86 health plan that is also authorized to conduct business in this  
87 state pursuant to chapter 627 or chapter 641.

88 (3) An out-of-state health care provider authorized under  
89 subsection (2) to provide telemedicine services to patients in  
90 this state is subject to appropriate disciplinary action by the  
91 appropriate board in this state or other regulatory entity in  
92 this state which has regulatory jurisdiction over the hospital,  
93 insurer, or health plan affiliated with the health care  
94 practitioner as described in paragraph (2) (c).

95 (4) A telemedicine provider and a hospital, insurer, or  
96 health plan operating in this state which is affiliated with an  
97 out-of-state health care practitioner as described in paragraph



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98 (2) (c) shall make any pertinent records available upon request  
99 of the appropriate board, the department, or other regulatory  
100 authority as applicable. Failure to comply with such request may  
101 result in the revocation of the provider's license or  
102 certification or imposition of a fine by the applicable board  
103 or, in the case of an affiliated hospital, insurer, or health  
104 plan, a fine, license restriction, or revocation of an  
105 affiliated entity's authorization to conduct business in this  
106 state.

107 (5) Consultations that occur on an emergency basis and that  
108 are conducted via telemedicine are exempt from subsection (1).  
109 As used in this subsection, the term "emergency basis" refers to  
110 the provision of emergency services and care for an emergency  
111 medical condition, as those terms are defined in s. 395.002.

112 (6) A health care practitioner or patient presenter acting  
113 under the direction and supervision of a telemedicine provider  
114 through the use of telemedicine may not be interpreted as  
115 practicing without a license. However, the health care  
116 practitioner must be trained in, educated on, and knowledgeable  
117 about the procedure and technology and may not perform duties  
118 for which he or she does not have sufficient training,  
119 education, and knowledge. Failure to have adequate training,  
120 education, and knowledge is grounds for disciplinary action by  
121 the appropriate board, or department if there is no board, or  
122 the affiliated regulatory entity for affiliated providers.

123 (7) Upon license or certification renewal, the health care  
124 practitioner practicing telemedicine shall:

125 (a) Designate himself or herself as a telemedicine provider  
126 on the practitioner's profile, if applicable; and





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127       (b) Submit proof of successful completion of a course and  
128 subsequent examination, approved by the applicable regulatory  
129 board, or the department if there is no board, on the standards  
130 of practice in telemedicine. The course must consist of 2 web-  
131 based contact hours. The first course and examination must be  
132 offered by October 1, 2014, and shall be conducted at least  
133 annually thereafter. The course and examination shall be  
134 developed and offered by a statewide professional association  
135 accredited to provide educational activities as designated by  
136 the board. The board shall review and approve the content of the  
137 initial course and examination if the board determines that the  
138 course and examination adequately and reliably satisfy the  
139 criteria set forth in this section. Annually thereafter, the  
140 applicable regulatory board shall review the course and  
141 examination and, if the board determines that the content  
142 continues to adequately and reliably satisfy the criteria set  
143 forth in this section, approve them. Successful completion of an  
144 approved course and examination may be used to satisfy 2 hours  
145 of continuing education requirements for the biennial period  
146 during which the approved course and examination are taken. A  
147 health care practitioner who does not complete an approved  
148 course and examination under this section may not provide  
149 telemedicine services.

150       (8) Venue for a civil or administrative action initiated by  
151 the telemedicine recipient, the department, or the appropriate  
152 board shall be based on the location of the patient or shall be  
153 in Leon County.

154       (9) The boards may adopt rules to administer the  
155 requirements of this act and must repeal rules that are



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156 inconsistent with this act, including rules that prohibit the  
157 use of telemedicine in this state. The appropriate board may  
158 also develop standards and adopt rules relating to requirements  
159 for patient presenters. Such rules may not require the use of  
160 patient presenters in telemedicine services if special skills or  
161 training is not needed for a patient to participate in the  
162 encounter.

163 Section 4. Section 456.4504, Florida Statutes, is created  
164 to read:

165 456.4504 Telemedicine standards.-

166 (1) The standard of care as provided in s. 766.102 is the  
167 same regardless of whether the health care practitioner provides  
168 health care services in person or by telemedicine. The  
169 applicable board may adopt rules specifically related to the  
170 standard of care for telemedicine.

171 (2) A telemedicine provider providing telemedicine services  
172 under this act is responsible for the quality of the equipment  
173 and technology employed and for its safe use. Telemedicine  
174 equipment and advanced communications technology must, at a  
175 minimum, be able to provide the same information to the  
176 telemedicine provider as the information that would be obtained  
177 in an in-person encounter with a health care provider and must  
178 enable the telemedicine provider to meet or exceed the  
179 prevailing standard of care for the practice of the profession.

180 (3) The telemedicine provider is not required to conduct a  
181 patient history or physical examination of the patient before  
182 engaging in a telemedicine encounter if the telemedicine  
183 provider conducts a patient evaluation sufficient to meet the  
184 prevailing standard of care for the services provided.



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185       (4) Before each telemedicine encounter, the identification  
186 and location of the telemedicine provider and all other  
187 individuals present via advanced communications technology who  
188 will view the patient or the patient's information must be  
189 identified to the patient.

190       (5) For the purposes of this act, the nonemergency  
191 prescribing of a legend drug based solely on an electronic  
192 questionnaire without a visual examination is considered a  
193 failure to practice with the level of care, skill, and treatment  
194 which is recognized by a reasonably prudent health care  
195 practitioner and is not authorized under this act.

196       (6) A controlled substance may not be prescribed through  
197 the use of telemedicine for chronic, nonmalignant pain.

198       (7) Medical records must be kept by each telemedicine  
199 provider that participates in a patient telemedicine encounter  
200 to the same extent as required for an in-person encounter under  
201 state and federal law. Telemedicine providers are encouraged to  
202 create electronic health records to document the encounter and  
203 to transmit information in the most efficient manner possible.

204       (8) Any medical records generated, including records  
205 maintained via video, audio, electronic, or other means, due to  
206 a telemedicine encounter must conform to the confidentiality and  
207 recordkeeping requirements of federal law and nationally  
208 recognized health care accreditation organizations and the laws  
209 and rules of this state, regardless of where the medical records  
210 of a patient in this state are maintained.

211       (9) Telemedicine technology used by a telemedicine provider  
212 must be encrypted and must use a recordkeeping program to verify  
213 each interaction.



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214 (10) In those situations in which a telemedicine provider  
215 uses telemedicine technology provided by a third-party vendor,  
216 the telemedicine provider must:

217 (a) Require a business associate agreement with the third-  
218 party vendor; and

219 (b) Ensure that the third-party vendor complies with the  
220 administrative, physical, and technical safeguards and standards  
221 set forth by the Health Information Technology for Economic and  
222 Clinical Health (HITECH) Act and by federal regulations  
223 implemented pursuant to HITECH.

224 Section 5. Section 456.4505, Florida Statutes, is created  
225 to read:

226 456.4505 Telemedicine services to diagnose or treat the  
227 human eye.—

228 (1) The use of automated equipment, including computer-  
229 controlled devices, in the provision of telemedicine services to  
230 diagnose or treat the human eye and its appendages, is  
231 permissible if the following requirements are met at the time  
232 the automated equipment is used:

233 (a) The automated equipment is approved by the United  
234 States Food and Drug Administration for the intended use;

235 (b) The automated equipment is designed and operated in a  
236 manner that provides any accommodation required by the federal  
237 ADA Amendments Act of 2008;

238 (c) The automated equipment and accompanying technology  
239 used for the collection and transmission of information and  
240 data, including photographs and scans, gathers and transmits  
241 protected health information in compliance with the federal  
242 Health Insurance Portability and Accountability Act;



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243 (d) The procedure for which the automated equipment is used  
244 has a recognized Current Procedural Terminology (CPT) code  
245 approved by the Centers for Medicare and Medicaid Services;

246 (e) The physical location of the automated equipment  
247 prominently displays the name and Florida license number of the  
248 individual who will read and interpret the diagnostic  
249 information and data, including photographs and scans;

250 (f) Diagnostic information and data, including photographs  
251 and scans, gathered by the automated equipment is read and  
252 interpreted by an optometrist licensed under chapter 463 or a  
253 physician skilled in diseases of the human eye and licensed  
254 under chapter 458 or chapter 459; and

255 (g) The owner or lessee of the automated equipment  
256 maintains liability insurance in an amount adequate to cover  
257 claims made by individuals diagnosed or treated based on  
258 information and data, including photographs and scans, generated  
259 by the automated equipment.

260 (2) A prescription for spectacles or contact lens may not  
261 be made based on telemedicine services or based solely on the  
262 refractive error of the human eye generated by a computer-  
263 controlled device such as an autorefractor.

264 Section 6. Section 456.4506, Florida Statutes, is created  
265 to read:

266 456.4506 Telemedicine services under Medicaid.-

267 (1) The Agency for Health Care Administration may reimburse  
268 for Medicaid services provided through telemedicine in the same  
269 manner and equivalent to Medicaid services provided in-person  
270 under parts III and IV of chapter 409, except as provided in  
271 subsection (7).



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272 (2) Telemedicine services reimbursed under Medicaid must  
273 meet the standards and requirements of this act.

274 (3) Except as provided in subsection (7), the agency may  
275 not require in-person contact between a telemedicine provider  
276 and Medicaid recipient as a prerequisite for payment for  
277 services appropriately provided through telemedicine in  
278 accordance with generally accepted health care practices and  
279 standards prevailing in the applicable health care community at  
280 the time the services are provided.

281 (4) Before receipt of telemedicine services, a Medicaid  
282 recipient or the legal representative of a Medicaid recipient  
283 must provide informed consent for telemedicine services. A  
284 Medicaid recipient shall also be provided the opportunity to  
285 receive the same service through an in-person encounter.

286 (5) A Medicaid service that is provided through a fee-for-  
287 service or managed care program may not be denied as a  
288 creditable Medicaid service solely because that service is  
289 provided through telemedicine.

290 (6) Reimbursement of telemedicine services under Medicaid  
291 shall be the amount negotiated between the parties involved to  
292 the extent permitted under state and federal law. Regardless of  
293 the reimbursement methodology or amount, telemedicine providers  
294 located at the originating site and the distant site should both  
295 receive reimbursement based on the services rendered, if any,  
296 during the telemedicine encounter.

297 (7) If, after implementation, the agency determines that  
298 the delivery of a particular service through telemedicine is not  
299 cost-effective or does not adequately meet the clinical needs of  
300 recipients and the determination has been documented, the agency



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301 may discontinue Medicaid reimbursement for that telemedicine  
302 service.

303 (8) The agency shall submit a report on the usage and  
304 costs, including savings, if any, associated with the provision  
305 of health care services through telemedicine under the Medicaid  
306 program by January 1, 2017, to the President of the Senate, the  
307 Speaker of the House of Representatives, and the minority  
308 leaders of the Senate and the House of Representatives.

309 (9) This section is repealed June 30, 2017.

310 Section 7. This act shall take effect October 1, 2014.

311  
312 ===== T I T L E A M E N D M E N T =====

313 And the title is amended as follows:

314 Delete everything before the enacting clause  
315 and insert:

316 A bill to be entitled  
317 An act relating to telemedicine; creating s. 456.4501,  
318 F.S.; providing a short title; creating s. 456.4502,  
319 F.S.; defining terms applicable to the act; creating  
320 s. 456.4503, F.S.; requiring specified practitioners  
321 providing telemedicine services to patients in this  
322 state to be licensed in this state; providing certain  
323 exceptions for emergency services and consultations;  
324 requiring pertinent records to be made available upon  
325 request; requiring other health care providers to be  
326 supervised by a telemedicine provider; providing  
327 continuing education requirements for telemedicine  
328 providers; establishing venue; authorizing the  
329 licensing boards to adopt rules; creating s. 456.4504,



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330 F.S.; providing standards and prohibitions for the  
331 provision of telemedicine services; prohibiting  
332 nonemergency prescribing of a legend drug without a  
333 physical examination; prohibiting the prescription of  
334 a controlled substance for chronic, nonmalignant pain  
335 using telemedicine; establishing a method for  
336 disciplinary action of out-of-state health providers;  
337 requiring a telemedicine provider to keep medical  
338 records of a patient; requiring the records to conform  
339 to certain requirements; providing duties for a  
340 telemedicine provider that uses telemedicine  
341 technology provided by a third-party vendor; creating  
342 s. 456.4505, F.S.; authorizing the use of telemedicine  
343 services in the diagnosis and treatment of the human  
344 eye; providing requirements for the use of automated  
345 equipment; requiring the owner or lessee of the  
346 automated equipment to maintain specified liability  
347 insurance under certain circumstances; prohibiting  
348 prescriptions for spectacles or contact lens based  
349 solely on the use of an autorefractor; creating s.  
350 456.4506, F.S.; providing requirements for  
351 reimbursement of telemedicine services under the  
352 Medicaid program; requiring a report to the  
353 Legislature on the usage and costs of telemedicine  
354 services under the Medicaid program by a certain date;  
355 providing for future repeal; providing an effective  
356 date.



By the Committees on Communications, Energy, and Public  
Utilities; and Health Policy

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1 A bill to be entitled  
2 An act relating to telemedicine; creating s. 456.4501,  
3 F.S.; providing a short title; creating s. 456.4502,  
4 F.S.; defining terms applicable to the act; creating  
5 s. s. 456.4503, F.S.; requiring specified  
6 practitioners providing telemedicine services to  
7 patients in this state to be licensed in this state;  
8 providing certain exceptions for emergency services  
9 and consultations; authorizing nonFlorida licensed  
10 physicians to meet alternative requirements; requiring  
11 pertinent records to be made available upon request;  
12 requiring other health care providers to be supervised  
13 by a telemedicine provider; providing continuing  
14 education requirements for telemedicine providers;  
15 establishing venue; providing applicability;  
16 authorizing the licensing boards to adopt rules;  
17 creating s. 456.4504, F.S.; providing standards and  
18 prohibitions for the provision of telemedicine  
19 services; prohibiting nonemergency prescribing of a  
20 legend drug without a physical examination;  
21 prohibiting the prescription of a controlled substance  
22 for chronic nonmalignant pain using telemedicine;  
23 creating s. 456.4505, F.S.; authorizing the use of  
24 telemedicine services in the diagnosis and treatment  
25 of the human eye; providing requirements for the use  
26 of automated equipment; requiring the owner or lessee  
27 of the automated equipment to maintain specified  
28 liability insurance under certain circumstances;  
29 prohibiting prescriptions for spectacles or contact

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30 lens based solely on the use of an autorefractor;  
31 creating s. 456.4506, F.S.; providing requirements for  
32 reimbursement of telemedicine services under the  
33 Medicaid program; requiring a report to the  
34 Legislature on the usage and costs of telemedicine in  
35 Medicaid by a certain date; providing for future  
36 repeal; amending s. 409.967, F.S.; prohibiting a  
37 managed care plan under Medicaid from using  
38 telemedicine providers that are not physicians;  
39 amending ss. 627.645 and 641.185, F.S.; prohibiting  
40 the denial of a claim for payment for medical services  
41 based on a medical necessity determination conducted  
42 via telemedicine unless the determination is made by a  
43 physician; providing an effective date.

44  
45 Be It Enacted by the Legislature of the State of Florida:

46  
47 Section 1. Section 456.4501, Florida Statutes, is created  
48 to read:

49 456.4501 Short title.—Sections 456.4501-456.4506 may be  
50 cited as the "Florida Telemedicine Act."

51 Section 2. Section 456.4502, Florida Statutes, is created  
52 to read:

53 456.4502 Definitions.—As used in this act, the term:

54 (1) "Act" means the Florida Telemedicine Act.

55 (2) "Advanced communications technology" means:

56 (a) Compressed digital interactive video, audio, or data  
57 transmissions;

58 (b) Real-time synchronous video- or web-conferencing

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59 communications;

60 (c) Secure web-based communications;

61 (d) Still-image capture or asynchronous store and forward;

62 (e) Health care service transmissions supported by mobile  
63 devices (mHealth); or

64 (f) Other technology that facilitates access to health care  
65 services or medical specialty expertise.

66 (3) "Distant site" means the location at which the  
67 telemedicine provider delivering the health care service is  
68 located at the time the service is provided via telemedicine.

69 (4) "Encounter" means an examination, consultation,  
70 monitoring, or other health care service.

71 (5) "Health care provider" means a health care practitioner  
72 or out-of-state licensed individual who provides health care  
73 services within the scope of his or her professional license.

74 (6) "In person" means that a patient is in the physical  
75 presence of the health care provider without regard to whether  
76 portions of the encounter are conducted by other providers.

77 (7) "Originating site" means the location of the patient  
78 receiving telemedicine services, which site meets the standards  
79 of this act as verified by the telemedicine provider.

80 (8) "Patient presenter" means an individual who has  
81 clinical background training in the use of advanced  
82 communications technology equipment and who is available at the  
83 originating site to present the patient, manage the cameras or  
84 equipment, and perform any hands-on activity necessary to  
85 successfully complete the telemedicine encounter under the  
86 direction and supervision of a telemedicine provider.

87 (9) "Store and forward" means the type of telemedicine

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88 encounter that uses still images of patient data for rendering a  
89 medical opinion or diagnosis. The term includes the asynchronous  
90 transmission of clinical data from one site to another.

91 (10) "Telehealth" means the use of advanced communications  
92 technology to provide access to health assessment, diagnosis,  
93 intervention, consultation, supervision, and information across  
94 distances. The term includes the use of remote patient-  
95 monitoring devices that are used to collect and transmit data  
96 for telemonitoring and interpretation.

97 (11) "Telemedicine" means the practice of medicine through  
98 the use of advanced communications technology by a telemedicine  
99 provider at a distant site in compliance with federal and state  
100 privacy and confidentiality requirements and encryption  
101 standards. Services provided through telemedicine may include  
102 patient assessment, diagnosis, consultation, treatment,  
103 prescription of medicine, transfer of medical data, or other  
104 medical-related services. The term does not include audio-only  
105 calls, e-mail messages, or facsimile transmissions. Telemedicine  
106 includes telehealth and telemonitoring.

107 (12) "Telemedicine provider" means a physician or physician  
108 assistant licensed under chapter 458 or chapter 459, an advanced  
109 registered nurse practitioner licensed under chapter 464, or a  
110 pharmacist licensed under chapter 465 who provides telemedicine  
111 services.

112 Section 3. Section 456.4503, Florida Statutes, is created  
113 to read:

114 456.4503 Telemedicine requirements.-

115 (1) An out-of-state physician, physician assistant,  
116 advanced registered nurse practitioner, or pharmacist who

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117 provides telemedicine across state lines to a patient physically  
 118 located in this state must have a Florida license to practice as  
 119 provided under chapter 458, chapter 459, chapter 464, or chapter  
 120 465.

121 (2) An out-of-state physician, physician assistant,  
 122 advanced registered nurse practitioner, or pharmacist is exempt  
 123 from subsection (1) if:

124 (a) The out-of-state physician, physician assistant,  
 125 advanced registered nurse practitioner, or pharmacist is  
 126 consulting with a telemedicine provider licensed to practice in  
 127 this state; and

128 (b) The telemedicine provider licensed in this state  
 129 retains ultimate authority and responsibility for the diagnosis,  
 130 treatment, and care of the patient located within this state.

131 (3) An out-of-state physician is exempt from subsection (1)  
 132 if the physician:

133 (a) Holds an unrestricted active license to practice  
 134 allopathic or osteopathic medicine in the state of the distant  
 135 site and that state's licensure requirements must meet or exceed  
 136 those of this state under chapter 458 or chapter 459, as  
 137 determined by the appropriate board;

138 (b) Maintains professional liability coverage that includes  
 139 coverage for telemedicine services, in an amount and manner  
 140 consistent with s. 458.320 and appropriate to the physician's  
 141 scope of practice and location;

142 (c) Has privileges at or is on the medical staff of an out-  
 143 of-state hospital affiliated with a Florida hospital licensed  
 144 under chapter 395, or has an affiliation with an out-of-state  
 145 health insurer or health plan that is also authorized to conduct

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146 business in this state pursuant to chapter 627 or chapter 641;  
 147 and

148 (d) Practices in a state that authorizes Florida-licensed  
 149 physicians to provide telemedicine services to patients located  
 150 in that state without having to be licensed to practice medicine  
 151 in that state.

152 (4) An out-of-state physician authorized under paragraph  
 153 (3) to provide telemedicine services to patients in this state  
 154 is subject to appropriate disciplinary action by the Board of  
 155 Medicine, the Board of Osteopathic Medicine, or a regulatory  
 156 entity in this state which has regulatory jurisdiction over the  
 157 hospital, insurer, or health plan affiliated with the physician  
 158 as described in subparagraph (3)(c).

159 (5) A telemedicine provider and a hospital, insurer, or  
 160 health plan operating in this state which is affiliated with an  
 161 out-of-state physician as described in subparagraph (3)(c) shall  
 162 make any pertinent records available upon request of the board,  
 163 the department, or other regulatory authority as applicable.  
 164 Failure to comply with such request may result in the revocation  
 165 of the provider's license or imposition of a fine by the  
 166 applicable board; or, in the case of an affiliated hospital,  
 167 insurer, or health plan, a fine, license restriction, or  
 168 revocation of an affiliated entity's authorization to conduct  
 169 business in this state.

170 (6) Consultations that occur on an emergency basis and that  
 171 are conducted via telemedicine are exempt from subsection (1).  
 172 The terms "emergency services and care" and "emergency medical  
 173 condition" have the same meanings as provided in s. 395.002.

174 (7) A health care provider or patient presenter acting

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175 under the direction and supervision of a telemedicine provider  
 176 through the use of telemedicine may not be interpreted as  
 177 practicing without a license. However, the health care provider  
 178 must be trained in, educated on, and knowledgeable about the  
 179 procedure and technology and may not perform duties for which he  
 180 or she does not have sufficient training, education, and  
 181 knowledge. Failure to have adequate training, education, and  
 182 knowledge is grounds for disciplinary action by the appropriate  
 183 board, or the department if there is no board, or the affiliated  
 184 regulatory entity for affiliated providers.

185 (8) Upon license renewal, a physician, physician assistant,  
 186 advanced registered nurse practitioner, or pharmacist practicing  
 187 telemedicine shall:

188 (a) Designate himself or herself as a telemedicine provider  
 189 on the practitioner profile; and

190 (b) Submit proof of successful completion of a course and  
 191 subsequent examination, approved by the board, on the standards  
 192 of practice in telemedicine. The course must consist of 2 web-  
 193 based contact hours. The first course and examination must be  
 194 offered by July 1, 2014, and shall be conducted at least  
 195 annually thereafter. The course and examination shall be  
 196 developed and offered by a statewide professional association  
 197 accredited to provide educational activities as designated by  
 198 the board. The board shall review and approve the content of the  
 199 initial course and examination if the board determines that the  
 200 course and examination adequately and reliably satisfy the  
 201 criteria set forth in this section. Annually thereafter, the  
 202 board shall review the course and examination and, if the board  
 203 determines that the content continues to adequately and reliably

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204 satisfy the criteria set forth in this section, approve them.  
 205 Successful completion of the board-approved course and  
 206 examination may be used to satisfy 2 hours of continuing  
 207 education requirements for the biennial period during which the  
 208 board-approved course and examination are taken. A physician,  
 209 physician assistant, advanced registered nurse practitioner, or  
 210 pharmacist who does not complete a board-approved course and  
 211 examination under this section may not provide telemedicine  
 212 services.

213 (9) Venue for a civil or administrative action initiated by  
 214 the telemedicine recipient, the department, or the appropriate  
 215 board shall be based on the location of the patient or shall be  
 216 in Leon County.

217 (10) The boards may adopt rules to administer the  
 218 requirements of this act and must repeal rules that are  
 219 inconsistent with this act, including rules that prohibit the  
 220 use of telemedicine in this state. The appropriate board may  
 221 also develop standards and adopt rules relating to requirements  
 222 for patient presenters. Such rules may not require the use of  
 223 patient presenters in telemedicine services if special skills or  
 224 training is not needed for a patient to participate in the  
 225 encounter.

226 Section 4. Section 456.4504, Florida Statutes, is created  
 227 to read:

228 456.4504 Telemedicine standards.—

229 (1) The standard of care as provided in s. 766.102 is the  
 230 same regardless of whether the physician, physician assistant,  
 231 advanced registered nurse practitioner, or pharmacist provides  
 232 health care services in person or by telemedicine. The

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233 applicable board may adopt rules specifically related to the  
 234 standard of care for telemedicine.

235 (2) A telemedicine provider providing telemedicine services  
 236 under this act is responsible for the quality of the equipment  
 237 and technology employed and for its safe use. Telemedicine  
 238 equipment and advanced communications technology must, at a  
 239 minimum, be able to provide the same information to the  
 240 telemedicine provider as the information that would be obtained  
 241 in an in-person encounter with a health care provider and must  
 242 enable the telemedicine provider to meet or exceed the  
 243 prevailing standard of care for the practice of the profession.

244 (3) The telemedicine provider is not required to conduct a  
 245 patient history or physical examination of the patient before  
 246 engaging in a telemedicine encounter if the telemedicine  
 247 provider conducts a patient evaluation sufficient to meet the  
 248 prevailing standard of care for the services provided.

249 (4) Before each telemedicine encounter, the identification  
 250 and location of the telemedicine provider and all other  
 251 individuals present via advanced communications technology who  
 252 will view the patient or the patient's information must be  
 253 identified to the patient.

254 (5) For the purposes of this act, the nonemergency  
 255 prescribing of a legend drug based solely on an electronic  
 256 questionnaire without a visual examination is considered a  
 257 failure to practice with the level of care, skill, and treatment  
 258 which is recognized by a reasonably prudent physician, physician  
 259 assistant, advanced registered nurse practitioner, or pharmacist  
 260 and is not authorized under this act.

261 (6) A controlled substance may not be prescribed through

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262 the use of telemedicine for chronic, nonmalignant pain.

263 (7) Medical records must be kept by each telemedicine  
 264 provider that participates in a patient telemedicine encounter  
 265 to the same extent as required for an in-person encounter under  
 266 state and federal law. Telemedicine providers are encouraged to  
 267 create electronic health records to document the encounter and  
 268 to transmit information in the most efficient manner possible.

269 (8) Any medical records generated, including records  
 270 maintained via video, audio, electronic, or other means, due to  
 271 a telemedicine encounter must conform to the confidentiality and  
 272 recordkeeping requirements of federal law and nationally  
 273 recognized health care accreditation organizations and the laws  
 274 and rules of this state, regardless of where the medical records  
 275 of a patient in this state are maintained.

276 (9) Telemedicine technology used by a telemedicine provider  
 277 must be encrypted and must use a recordkeeping program to verify  
 278 each interaction.

279 (10) In those situations in which a telemedicine provider  
 280 uses telemedicine technology provided by a third-party vendor,  
 281 the telemedicine provider must:

282 (a) Require a business associate agreement with the third-  
 283 party vendor; and

284 (b) Ensure that the third-party vendor complies with the  
 285 administrative, physical, and technical safeguards and standards  
 286 set forth by the Health Information Technology for Economic and  
 287 Clinical Health (HITECH) Act and by federal regulations  
 288 implemented pursuant to HITECH.

289 Section 5. Section 456.4505, Florida Statutes, is created  
 290 to read:

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291 456.4505 Telemedicine services to diagnose or treat the  
 292 human eye.-

293 (1) The use of automated equipment, including computer-  
 294 controlled devices, in the provision of telemedicine services to  
 295 diagnose or treat the human eye and its appendages, is  
 296 permissible if the following requirements are met at the time  
 297 the automated equipment is used:

298 (a) The automated equipment is approved by the United  
 299 States Food and Drug Administration for the intended use;

300 (b) The automated equipment is designed and operated in a  
 301 manner that provides any accommodation required by the federal  
 302 ADA Amendments Act of 2008;

303 (c) The automated equipment and accompanying technology  
 304 used for the collection and transmission of information and  
 305 data, including photographs and scans, gathers and transmits  
 306 protected health information in compliance with the federal  
 307 Health Insurance Portability and Accountability Act;

308 (d) The procedure for which the automated equipment is used  
 309 has a recognized Current Procedural Terminology (CPT) code  
 310 approved by the Centers for Medicare and Medicaid Services;

311 (e) The physical location of the automated equipment  
 312 prominently displays the name and Florida license number of the  
 313 individual who will read and interpret the diagnostic  
 314 information and data, including photographs and scans;

315 (f) Diagnostic information and data, including photographs  
 316 and scans, gathered by the automated equipment is read and  
 317 interpreted by an optometrist licensed under chapter 463 or a  
 318 physician skilled in diseases of the human eye and licensed  
 319 under chapter 458 or chapter 459; and

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320 (g) The owner or lessee of the automated equipment  
 321 maintains liability insurance in an amount adequate to cover  
 322 claims made by individuals diagnosed or treated based on  
 323 information and data, including photographs and scans, generated  
 324 by the automated equipment.

325 (2) A prescription for spectacles or contact lens may not  
 326 be made based on telemedicine services or based solely on the  
 327 refractive error of the human eye generated by a computer-  
 328 controlled device such as an autorefractor.

329 Section 6. Section 456.4506, Florida Statutes, is created  
 330 to read:

331 456.4506 Telemedicine services under Medicaid.-

332 (1) The Agency for Health Care Administration shall  
 333 reimburse for Medicaid services provided through telemedicine in  
 334 the same manner and equivalent to Medicaid services provided in  
 335 person under parts III and IV of chapter 409, except as provided  
 336 in subsection (7).

337 (2) Telemedicine services reimbursed under Medicaid must  
 338 meet the standards and requirements of this act.

339 (3) Except as provided in subsection (7), the agency may  
 340 not require in-person contact between a telemedicine provider  
 341 and Medicaid recipient as a prerequisite for payment for  
 342 services appropriately provided through telemedicine in  
 343 accordance with generally accepted health care practices and  
 344 standards prevailing in the applicable health care community at  
 345 the time the services are provided.

346 (4) Before receipt of telemedicine services, a Medicaid  
 347 recipient or the legal representative of a Medicaid recipient  
 348 must provide informed consent for telemedicine services. A

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349 Medicaid recipient shall also be provided the opportunity to  
 350 receive the same service through an in-person encounter.

351 (5) A Medicaid service that is provided through a fee-for-  
 352 service or managed care program may not be denied as a  
 353 creditable Medicaid service solely because that service is  
 354 provided through telemedicine.

355 (6) Reimbursement of telemedicine services under Medicaid  
 356 shall be the amount negotiated between the parties involved to  
 357 the extent permitted under state and federal law. Regardless of  
 358 the reimbursement methodology or amount, telemedicine providers  
 359 located at the originating site and the distant site should both  
 360 receive reimbursement based on the services rendered, if any,  
 361 during the telemedicine encounter.

362 (7) If, after implementation, the agency determines that  
 363 the delivery of a particular service through telemedicine is not  
 364 cost-effective or does not adequately meet the clinical needs of  
 365 recipients and the determination has been documented, the agency  
 366 may discontinue Medicaid reimbursement for that telemedicine  
 367 service.

368 (8) The agency shall submit a report on the usage and  
 369 costs, including savings, if any, associated with the provision  
 370 of health care services through telemedicine under the Medicaid  
 371 program by January 1, 2017, to the President of the Senate, the  
 372 Speaker of the House of Representatives, and the minority  
 373 leaders of the Senate and the House of Representatives.

374 (9) This section is repealed June 30, 2017.

375 Section 7. Paragraph (c) of subsection (2) of section  
 376 409.967, Florida Statutes, is amended to read:

377 409.967 Managed care plan accountability.-

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378 (2) The agency shall establish such contract requirements  
 379 as are necessary for the operation of the statewide managed care  
 380 program. In addition to any other provisions the agency may deem  
 381 necessary, the contract must require:

382 (c) Access.-

383 1. The agency shall establish specific standards for the  
 384 number, type, and regional distribution of providers in managed  
 385 care plan networks to ensure access to care for both adults and  
 386 children. Each plan must maintain a regionwide network of  
 387 providers in sufficient numbers to meet the access standards for  
 388 specific medical services for all recipients enrolled in the  
 389 plan. A plan may not use telemedicine providers as defined in s.  
 390 456.4502 to meet this requirement unless the provider is  
 391 licensed under chapter 458 or chapter 459. The exclusive use of  
 392 mail-order pharmacies may not be sufficient to meet network  
 393 access standards. Consistent with the standards established by  
 394 the agency, provider networks may include providers located  
 395 outside the region. A plan may contract with a new hospital  
 396 facility before the date the hospital becomes operational if the  
 397 hospital has commenced construction, will be licensed and  
 398 operational by January 1, 2013, and a final order has issued in  
 399 any civil or administrative challenge. Each plan shall establish  
 400 and maintain an accurate and complete electronic database of  
 401 contracted providers, including information about licensure or  
 402 registration, locations and hours of operation, specialty  
 403 credentials and other certifications, specific performance  
 404 indicators, and such other information as the agency deems  
 405 necessary. The database must be available online to both the  
 406 agency and the public and have the capability to compare the

579-03542A-14 20141646c1

407 availability of providers to network adequacy standards and to  
408 accept and display feedback from each provider's patients. Each  
409 plan shall submit quarterly reports to the agency identifying  
410 the number of enrollees assigned to each primary care provider.

411 2. Each managed care plan must publish any prescribed drug  
412 formulary or preferred drug list on the plan's website in a  
413 manner that is accessible to and searchable by enrollees and  
414 providers. The plan must update the list within 24 hours after  
415 making a change. Each plan must ensure that the prior  
416 authorization process for prescribed drugs is readily accessible  
417 to health care providers, including posting appropriate contact  
418 information on its website and providing timely responses to  
419 providers. For Medicaid recipients diagnosed with hemophilia who  
420 have been prescribed anti-hemophilic-factor replacement  
421 products, the agency shall provide for those products and  
422 hemophilia overlay services through the agency's hemophilia  
423 disease management program.

424 3. Managed care plans, and their fiscal agents or  
425 intermediaries, must accept prior authorization requests for any  
426 service electronically.

427 Section 8. Subsection (3) is added to section 627.645,  
428 Florida Statutes, to read:

429 627.645 Denial of health insurance claims restricted.—

430 (3) A claim for payment under a health insurance policy for  
431 medical care or treatment may not be denied on the basis of a  
432 medical necessity determination conducted via telemedicine as  
433 defined in s. 456.4502 unless the determination is made by a  
434 physician licensed under chapter 458 or chapter 459.

435 Section 9. Paragraph (m) is added to subsection (1) of

579-03542A-14 20141646c1

436 section 641.185, Florida Statutes, to read:

437 641.185 Health maintenance organization subscriber  
438 protections.—

439 (1) With respect to the provisions of this part and part  
440 III, the principles expressed in the following statements shall  
441 serve as standards to be followed by the commission, the office,  
442 the department, and the Agency for Health Care Administration in  
443 exercising their powers and duties, in exercising administrative  
444 discretion, in administrative interpretations of the law, in  
445 enforcing its provisions, and in adopting rules:

446 (m) A health maintenance organization may not deny a claim  
447 for payment for medical care or treatment on the basis of a  
448 medical necessity determination conducted via telemedicine as  
449 defined in s. 456.4502 unless the determination is made by a  
450 physician licensed under chapter 458 or chapter 459.

451 Section 10. This act shall take effect October 1, 2014.





**THE FLORIDA SENATE**  
**COMMITTEE ON HEALTH POLICY**

*Location*  
530 Knott Building

*Mailing Address*  
404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5824

Senator Aaron Bean, *Chair*  
Senator Eleanor Sobel, *Vice Chair*

*Professional Staff:* Sandra R. Stovall, *Staff Director*

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

April 3, 2014

Senator Denise Grimsley  
Chairman, Appropriations Subcommittee on  
Health and Human Services  
306 Senate Office Building  
404 South Monroe Street  
Tallahassee, Florida 32399-1100

Dear Chairman Grimsley:

I am requesting that SB 1646 (Telemedicine), a Health Policy committee bill, be placed on the agenda of the committee's next scheduled meeting. Your consideration would be greatly appreciated.

If you have questions, please call 487-5824.

Respectively,

Aaron Bean  
State Senator, District 4

cc: Scarlet Pigott, Staff Director  
Appropriations Subcommittee on Health  
and Human Services

SENATE APPROPRIATIONS  
RECEIVED  
14 APR -3 PM 5:15  
SENATE CHAIRMAN  
STAFF DIR. STAFF



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations, *Vice Chair*  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Health  
and Human Services  
Banking and Insurance  
Education  
Ethics and Elections  
Gaming  
Governmental Oversight and Accountability  
Rules

### SENATOR LIZBETH BENACQUISTO

*Majority Leader*  
30th District

April 9, 2013

The Honorable Denise Grimsley, Chair  
Senate Health and Human Services Appropriations Committee  
306 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Grimsley,

Please excuse me from attending the Senate Committee on Health and Human Services Appropriations on April 9<sup>th</sup>. I have a commitment at that time. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto  
Senate District 30  
Majority Leader

#### REPLY TO:

- 1926 Victoria Ave, 2nd Floor, Fort Myers, Florida 33901 (239) 338-2570
- 330 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4 19 2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 1139

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG      FLORIDA      33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-9-14

Meeting Date

Topic Long-Term Care Ombudsman Program

Bill Number CS/SB 508

(if applicable)

Name Susan Anderson

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title Deputy State Ombudsman

Address 4040 Esplanade Way

Street

Phone 850-414-2054

Pallahassee

City

FL

State

32399-

Zip 7000

E-mail Andersons@elderaffairs.org

Speaking:  For  Against  Information

Representing Long-Term Care Ombudsman Program

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/9/14

Meeting Date

Topic State Ombudsman Program

Bill Number SB 508  
*(if applicable)*

Name Laura Cantwell

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Associate State Director

Address 400 Camdon Pkwy, St. 100

Phone 880-570-2110

St Pete FL 33716  
City State Zip

E-mail lcantwell@ocarp.org

Speaking:  For  Against  Information

Representing AARP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/9/14

Meeting Date

Topic Telemedicine

Bill Number CS/SB 1642  
(if applicable)

Name Alison Dudley

Amendment Barcode 144 9942 8149942  
(if applicable)

Job Title President AB Dudley: ABCS

Address P.O. Box 428

Phone 850/559-1139

Street

Tell FL 32302

City

State

Zip

E-mail alisondudley@dudleyand  
associates.com

Speaking:  For  Against  Information

Representing Florida Radiological Society

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/9/14  
Meeting Date

Topic Telemedicine

Bill Number CS/SB 1646  
(if applicable)

Name Alison Dudley

Amendment Barcode <sup>Genia</sup> 259150  
(if applicable)

Job Title President, AB Dudley ASC

Address PO Box 428

Phone 850/559-1139

Jail Fla. 32302  
City State Zip

E-mail alisondudley@dudleyandassociates.com

Speaking:  For  Against  Information

Representing Florida Radiological Society

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

9/9/14  
Meeting Date

Topic Telemedicine

Bill Number CS/SB 1646  
(if applicable)

Name Alison Dudley

Gracia amendment  
Amendment Barcode 651910  
(if applicable)

Job Title President ABS Dudley, ASCS

Address PO BOX 428 Tall Fl. 37302

Phone 850/559-1139

Street

Tall Fl 37302

City

State

Zip

E-mail alisondudley@dudleyand  
associates.com

Speaking:  For  Against  Information

Representing Florida Radiological Society

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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4/9/14  
Meeting Date

Topic Telemedicine

Bill Number 1646

Name Holly Miller

Amendment Barcode 449942  
(if applicable)

Job Title Gov't Affairs Counsel

Address \_\_\_\_\_  
Street

Phone 850 567 0018

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail hmiller@medical.ov

Speaking:  For  Against  Information

Representing FMA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/9/14

Meeting Date

Topic Telemedicine

Bill Number 1646  
(if applicable)

Name Holly Miller

Amendment Barcode 651910  
(if applicable)

Job Title Gov't Affairs Counsel

Address \_\_\_\_\_  
Street

Phone 850 567 0018

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail hnmiller@flmedical.org

Speaking:  For  Against  Information

Representing FMA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/9/14

Meeting Date

Topic Telemedicine

Bill Number 1646  
(if applicable)

Name Holly Miller

Amendment Barcode 259150  
(if applicable)

Job Title Govt Affairs Counsel

Address \_\_\_\_\_  
Street

Phone 850 567 0018

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FMA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/9/10  
Meeting Date

Topic Telemedicine

Bill Number 1646  
(if applicable)

Name David Christian

Amendment Barcode 449942  
(if applicable)

Job Title VP - Gov't Affairs

Address 137 S. Bronwyn St

Phone 850/521-1200

10 Lakeside FL 32301  
City State Zip

E-mail dchristian@flchamber.com

Speaking:  For  Against  Information

Representing FL Chamber

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/9/14  
Meeting Date

Topic Telemedicine

Bill Number 1646  
*(if applicable)*

Name David Christon

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title VP - Govt Affairs

Address 136 S. Bronough St.

Phone 836/521-1200

Tallahassee FL 32301

City State Zip

E-mail dchriston@flchambers.com

Speaking:  For  Against  Information

Representing FL Chamber

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4.9.14

Meeting Date

Topic Telemedicine

Bill Number 1646  
*(if applicable)*

Name Pam Pfeifer

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Associate VP, Govt Affairs

Address 1290 Bruce & Downs Blvd

Phone 850.980.3802

Tampa FL 33612  
*Street City State Zip*

E-mail ppfeifer@health.usf.edu

Speaking:  For  Against  Information

Representing USF Health

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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4 1 9 1201  
Meeting Date

Topic \_\_\_\_\_

Bill Number 1646  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*  
SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/9/14

Meeting Date

Topic Telemedicine

Bill Number 1646 (if applicable)

Name Karen Koch (Cook)

Amendment Barcode (if applicable)

Job Title Vice President

Address 316 E. Park Ave

Phone 850-224-6048

Tallahassee FL 32301

City State Zip

E-mail Karen@fccmh.org

Speaking: [X] For [ ] Against [ ] Information

Representing FL Council for Behavioral Healthcare

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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*Meeting Date* \_\_\_\_\_

Topic SB 1646 Telemedicine Bill Number 1646  
*(if applicable)*

Name Crystal Strick Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title VP Gov Affairs

Address \_\_\_\_\_ Phone \_\_\_\_\_  
*Street*

\_\_\_\_\_ E-mail \_\_\_\_\_  
*City State Zip*

Speaking:  For  Against  Information

Representing FL Hospital Assoc

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

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

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25

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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4 19 12014  
Meeting Date

Topic \_\_\_\_\_

Bill Number 1084  
1048  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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4/9/14

Meeting Date

Topic \_\_\_\_\_

Bill Number 1134  
*(if applicable)*

Name PAUL WATSON LAMBERT

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title GENERAL COUNSEL

Address 502 North Adams St., Tallahassee, FL 32312

Phone 850 224-9393

Tallahassee FL 32301  
City State Zip

E-mail plamberto@paul Lambert Law.com

Speaking:  For  Against  Information

Representing Florida Chiropractic Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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# CourtSmart Tag Report

**Room:** KN 412  
**Case:** Appropriations Subcommittee on Health and Human Services

**Type:**  
**Judge:**

**Started:** 4/9/2014 2:03:06 PM  
**Ends:** 4/9/2014 2:49:05 PM **Length:** 00:46:00

2:03:09 PM Meeting Called to Order  
2:03:27 PM Roll Call  
2:03:50 PM Opening Remarks by Chair Grimsley  
2:03:59 PM Tab 1  
2:04:13 PM SB 640 by Oneca Lowery for Sen Braynon  
2:04:48 PM Roll Call on SB 640 - FAV  
2:05:56 PM Tab 5  
2:06:05 PM SB 1084 by Dave Murzin for Sen Evers; Public Assistance Fraud  
2:06:48 PM Amendment #439384 - Adopted  
2:11:47 PM Roll Call on SB 1084 - FAV  
2:12:17 PM Tab 2  
2:12:23 PM SB 1412 by Sanite Ermat  
2:13:47 PM Roll Call on SB 1412 - FAV  
2:14:18 PM Tab 3  
2:14:29 PM CS/SB 1134 by Sen Detert; Home Medical Equipment  
2:15:18 PM Public Testimony  
2:15:36 PM Brian Pitts, Justice 2 Jesus  
2:16:47 PM Roll Call on CS/SB 1134 - FAV  
2:17:14 PM Tab 6  
2:17:22 PM CS/SB 508 by Sen Detert; State Ombudsman Program  
2:18:20 PM Roll Call on CS/SB 508 - FAV  
2:18:48 PM Tab 4  
2:18:57 PM CS/SB 1192 by Sen Sobel; Palliative Care - TP  
2:19:00 PM Motion Sen Sachs  
2:19:41 PM Tab 7  
2:19:50 PM CS/SB 1646 by Sen Bean; Telemedicine  
2:20:47 PM Amendment #651910 & 259150 - WD  
2:21:25 PM Amendment #449942 - Not Adopted  
2:35:31 PM Public Testimony  
2:35:49 PM Alison Dudley, President Florida Radiological Society  
2:36:46 PM Holly Miller, Government Affairs Counsel  
2:40:26 PM Public Testimony  
2:40:47 PM Brian Pitts, Justice 2 Jesus  
2:42:53 PM Late Filed Amendment #651910 - Adopted  
2:44:36 PM Amendment to the Amendment #259150 - Adopted  
2:47:43 PM Roll Call on CS/SB 1646 - FAV  
2:48:15 PM Motion by Sen Richter  
2:48:33 PM Motion by Sen Garcia  
2:48:39 PM Motion by Sen Thrasher  
2:48:45 PM Motion by Sen Flores  
2:48:53 PM Meeting Adjourned