

By the Committee on Health, Aging and Long-Term Care

317-399C-99

1                                   A bill to be entitled  
2           An act relating to nursing homes; amending s.  
3           400.0060, F.S.; providing definitions relating  
4           to the Long-Term Care Ombudsman Program;  
5           defining the term "conflict of interest";  
6           amending s. 400.0061, F.S.; providing for  
7           inspections of long-term care facilities rather  
8           than administrative inspections; amending s.  
9           400.0065, F.S.; conforming provisions to  
10          reflect the transfer of regulatory authority  
11          from the Department of Health and  
12          Rehabilitative Services to the Department of  
13          Children and Family Services; revising  
14          provisions that prohibit certain conduct that  
15          could create a conflict of interest; amending  
16          s. 400.0067, F.S., relating to the State  
17          Long-Term Care Ombudsman Council; conforming  
18          provisions to reflect the transfer of  
19          regulatory authority; conforming provisions to  
20          a change in inspection requirements for  
21          long-term care facilities; revising  
22          requirements for contents of the annual report  
23          prepared by the council; deleting obsolete  
24          dates; deleting obsolete provisions with  
25          respect to the initial appointments to the  
26          council; amending s. 400.0069, F.S., relating  
27          to district long-term care ombudsman councils;  
28          revising provisions to reflect the transfer of  
29          regulatory authority; conforming provisions to  
30          a change in inspection requirements for  
31          long-term care facilities; expanding the

1 authority for ombudsman to review personal  
2 property and money accounts of residents of  
3 long-term care facilities; providing for state  
4 agencies to require the attendance of agency  
5 representatives at council meetings when  
6 requested; amending s. 400.0071, F.S., relating  
7 to complaint procedures; deleting obsolete  
8 provisions; amending s. 400.0073, F.S.;  
9 clarifying requirements for inspections of  
10 long-term care facilities by a district  
11 ombudsman council; requiring the district  
12 ombudsman to report to the adult protective  
13 services program actions or conduct of a  
14 long-term care facility which threatens a  
15 resident of the facility; amending s. 400.0075,  
16 F.S.; requiring that the district ombudsman  
17 council seek certain remedies upon determining  
18 that a resident of a long-term care facility is  
19 in imminent danger; requiring that the district  
20 ombudsman council refer certain complaints to  
21 the Agency for Health Care Administration;  
22 requiring that the agency immediately  
23 investigate certain complaints; providing for  
24 the state ombudsman council to publicize  
25 certain recommendations and administrative  
26 actions; deleting obsolete provisions;  
27 providing for certain complaints to be referred  
28 to the Medicaid Fraud Control Unit of the  
29 Office of the Attorney General; amending s.  
30 400.0081, F.S.; providing for the state  
31 long-term care ombudsman and state and district

1           ombudsman council members to have access to  
2           certain records of a long-term care facility;  
3           amending s. 400.0089, F.S., relating to agency  
4           reports; conforming provisions to reflect the  
5           transfer of regulatory authority; amending s.  
6           400.0091, F.S., relating to the training of  
7           ombudsman employees; deleting an obsolete date;  
8           amending s. 400.021, F.S.; redefining the term  
9           "department" to reflect the transfer of  
10          regulatory authority from the Department of  
11          Health and Rehabilitative Services to the  
12          Department of Children and Family Services;  
13          amending s. 400.022, F.S., relating to rights  
14          of nursing home residents; conforming  
15          provisions; requiring written notice before a  
16          room change; authorizing a room change without  
17          written notice to a resident for medically  
18          necessary care following consultation with the  
19          medical director of the facility or the  
20          resident's attending physician; providing for  
21          the resident to refuse a room change for  
22          medically necessary care; conforming a  
23          cross-reference; amending s. 400.0255, F.S.;  
24          defining the terms "discharge" and "transfer";  
25          requiring that nursing homes comply with  
26          certain discharge or transfer procedures;  
27          requiring the nursing home administrator or a  
28          designee of the administrator to sign notices  
29          of discharge or transfer; requiring that a  
30          facility notify the Agency for Health Care  
31          Administration when certain conditions in the

1 facility necessitate the discharge or transfer  
2 of a resident; requiring that the agency  
3 conduct an onsite inspection of the facility  
4 under certain circumstances; requiring the  
5 agency to develop a standard, uniform document  
6 for notifying residents of a discharge or  
7 transfer; providing for a nursing home resident  
8 to request a local district ombudsman to review  
9 any notice of discharge or transfer given to  
10 the resident; requiring that the local district  
11 ombudsman review a notice of discharge or  
12 transfer within a specified time when review is  
13 requested; requiring the nursing home  
14 administrator, or a designee of the  
15 administrator, to forward a resident's request  
16 for review of a discharge or transfer notice to  
17 an ombudsman within a specified time; providing  
18 for tolling of the advance notice period;  
19 providing for notice of emergency discharge or  
20 transfer to be given to the resident and local  
21 district ombudsman; requiring review within a  
22 specified time by local district ombudsman of  
23 emergency discharge or transfer; authorizing  
24 local district ombudsmen to conduct private,  
25 informal conversations with residents notified  
26 of discharge or transfer and with their family  
27 members, legal guardians, or designees;  
28 amending s. 468.1755, F.S., relating to  
29 disciplinary proceedings for nursing home  
30 administrators; providing for disciplining an  
31 administrator for authorizing a discharge or

1 transfer of a nursing home resident for a  
2 reason other than those specified in law;  
3 amending ss. 394.4625, 468.1756, F.S., relating  
4 to certain admissions to a mental health  
5 facility and a statute of limitations;  
6 conforming cross-references to changes made by  
7 the act; providing an appropriation; providing  
8 an effective date.

9

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

11

12 Section 1. Section 400.0060, Florida Statutes, is  
13 amended to read:

14 400.0060 Definitions.--When used in this part, ~~unless~~  
15 ~~the context otherwise requires,~~ the term:

16 (1) "Agency" means the Agency for Health Care  
17 Administration.

18 (2) "Conflict of interest" means a clash between the  
19 public interest and the private pecuniary interest of a person  
20 which is the result of:

21 (a) A direct involvement in the licensing or  
22 certification of a long-term care facility or of a provider of  
23 a long-term care service;

24 (b) An ownership or investment interest, such as  
25 equity, debt, or other financial relationships, in a long-term  
26 care facility or a long-term care service;

27 (c) Employment by, or participation in the management  
28 of, a long-term care facility; or

29 (d) The receipt of, or having the right to receive,  
30 directly or indirectly, remuneration, in cash or in kind,

31

1 under a compensation arrangement with an owner or operator of  
2 a long-term care facility.

3 (3)~~(2)~~ "Long-term care facility" means a skilled  
4 nursing facility, nursing facility, assisted living facility,  
5 adult family-care home, board and care facility, or any other  
6 similar adult care center.

7 (4)~~(3)~~ "Office" means the Office of State Long-Term  
8 Care Ombudsman.

9 (5)~~(4)~~ "Ombudsman" means the individual designated to  
10 head the Office of State Long-Term Care Ombudsman.

11 (6)~~(5)~~ "Resident" means an individual 60 years of age  
12 or older who resides in a long-term care facility.

13 (7)~~(6)~~ "Secretary" means the Secretary of Elderly  
14 Affairs.

15 Section 2. Section 400.0061, Florida Statutes, is  
16 amended to read:

17 400.0061 Legislative findings and intent; long-term  
18 care facilities.--

19 (1) The Legislature finds that conditions in long-term  
20 care facilities in this state are such that the rights,  
21 health, safety, and welfare of residents are not ensured by  
22 rules of state agencies ~~the Department of Health and~~  
23 ~~Rehabilitative Services or the Agency for Health Care~~  
24 ~~Administration~~, or by the good faith of owners or operators of  
25 long-term care facilities. Furthermore, there is a need for a  
26 formal mechanism whereby a long-term care facility resident or  
27 his or her representative may make a complaint against the  
28 facility or its employees, or against other persons who are in  
29 a position to restrict, interfere with, or threaten the  
30 rights, health, safety, or welfare of the resident. The  
31 Legislature finds that concerned citizens are more effective

1 advocates of the rights of long-term-care-facility residents  
2 ~~others~~ than governmental agencies. The Legislature further  
3 finds that in order to be eligible to receive an allotment of  
4 funds authorized and appropriated under the federal Older  
5 Americans Act, the state must establish and operate an Office  
6 of State Long-Term Care Ombudsman, to be headed by the State  
7 Long-Term Care Ombudsman, and carry out a long-term care  
8 ombudsman program.

9 (2) It is the intent of the Legislature, therefore, to  
10 utilize voluntary citizen ombudsman councils under the  
11 leadership of the ombudsman, and through them to operate an  
12 ombudsman program that ~~which~~ shall, without interference by  
13 any executive agency, undertake to discover, investigate, and  
14 determine the presence of conditions or individuals which  
15 constitute a threat to the rights, health, safety, or welfare  
16 of the residents of long-term care facilities. To ensure that  
17 the effectiveness and efficiency of such investigations are  
18 not impeded by advance notice or delay, the Legislature  
19 intends that the ombudsman and ombudsman councils and their  
20 designated representatives not be required to obtain warrants  
21 in order to enter into or conduct ~~administrative~~ inspections  
22 of long-term care facilities. It is the further intent of the  
23 Legislature that the environment in long-term care facilities  
24 shall be conducive to the dignity and independence of  
25 residents and that investigations by ombudsman councils shall  
26 further the enforcement of laws and ~~rules, and regulations~~  
27 that safeguard the health, safety, and welfare of residents.

28 Section 3. Paragraph (f) of subsection (2) and  
29 subsection (3) of section 400.0065, Florida Statutes, are  
30 amended to read:

31

1           400.0065 State Long-Term Care Ombudsman; duties and  
2 responsibilities; conflict of interest.--

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

5           (f) Perform the duties specified in state and federal  
6 law without interference by officials of the Department of  
7 Elderly Affairs, the Agency for Health Care Administration, or  
8 the Department of Children and Family Health and  
9 ~~Rehabilitative~~ Services. The ombudsman shall report to the  
10 Governor, the President of the Senate, and the Speaker of the  
11 House of Representatives whenever organizational or  
12 departmental policy issues threaten the ability of the Office  
13 of State Long-Term Care Ombudsman to carry out its duties  
14 under state or federal law.

15           (3) The State Long-Term Care Ombudsman may ~~shall~~ not  
16 have a conflict of interest.

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

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

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

27  
28 The Department of Elderly Affairs shall adopt rules to  
29 establish procedures to identify and eliminate conflicts of  
30 interest ~~as described in this subsection.~~

31



1           Section 4. Section 400.0067, Florida Statutes, is  
2 amended to read:

3           400.0067 Establishment of State Long-Term Care  
4 Ombudsman Council; duties; membership.--

5           (1) There is created within the Office of State  
6 Long-Term Care Ombudsman, the State Long-Term Care Ombudsman  
7 Council.

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

9           (a) Assist the ombudsman in reaching a consensus among  
10 district ombudsman councils on issues of statewide concern.

11           (b) Serve as an appellate body in receiving from the  
12 district ombudsman councils complaints not resolved at the  
13 district level. The state ombudsman council may enter any  
14 long-term care facility involved in an appeal, pursuant to the  
15 conditions specified in s. 400.0069(3).

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

22           (d) Assist the ombudsman in eliciting, receiving,  
23 responding to, and resolving complaints made by or on behalf  
24 of long-term care facility residents and in developing  
25 procedures, in consultation with the Department of Elderly  
26 Affairs, relating to the receipt and resolution of such  
27 complaints.

28           (e) Elicit and coordinate state, local, and voluntary  
29 organizational assistance for the purpose of improving the  
30 care received by residents of a long-term care facility.

31

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

6 (g) Enter into a cooperative agreement with the  
7 statewide and district human rights advocacy committees for  
8 the purpose of coordinating advocacy services provided to  
9 residents of long-term care facilities.

10 (h) Prepare an annual report describing the activities  
11 carried out by the ombudsman and the State Long-Term Care  
12 Ombudsman Council in the year for which the report is  
13 prepared. The State Long-Term Care Ombudsman Council shall  
14 submit the report to the Commissioner of the United States  
15 Administration on Aging, the Governor, the President of the  
16 Senate, the Speaker of the House of Representatives, the  
17 minority leaders of the House and Senate, the chairpersons of  
18 appropriate House and Senate committees, the Secretaries of  
19 Elderly Affairs and Children and Family ~~Health and~~  
20 ~~Rehabilitative~~ Services, and the Director of Health Care  
21 Administration. The report shall be submitted at least 30  
22 days before the convening of the regular session of the  
23 Legislature and shall, at a minimum:

24 1. Contain ~~and analyze~~ data collected and provide  
25 analysis of that data concerning complaints about and  
26 conditions in long-term care facilities.

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

29 3. Contain recommendations for improving the quality  
30 of life of the residents and for protecting the health,  
31 safety, welfare, and rights of the residents.

1           4. Analyze the success of the ombudsman program during  
2 the preceding year and identify the barriers that prevent the  
3 optimal operation of the program.

4           ~~5. The report of the program's successes shall also~~  
5 Address the relationship between the state long-term care  
6 ombudsman program, the Department of Elderly Affairs, the  
7 Agency for Health Care Administration, and the Department of  
8 Children and Family ~~Health and Rehabilitative~~ Services, and  
9 assess an assessment of how successfully the state long-term  
10 care ombudsman program has carried out its responsibilities  
11 under the Older Americans Act.

12           ~~6.5.~~ Provide policy and regulatory and legislative  
13 recommendations to solve identified problems; resolve  
14 residents' complaints; improve the quality of care and life of  
15 the residents; protect the health, safety, welfare, and rights  
16 of the residents; and remove the barriers to the optimal  
17 operation of the state long-term care ombudsman program.

18           ~~7.6.~~ Contain recommendations from the district  
19 ombudsman councils regarding program functions and activities.

20           ~~8.7.~~ Include a description of ~~report on~~ the activities  
21 of the legal advocate and other legal advocates acting on  
22 behalf of the district and state councils.

23           9. Contain a description of the disposition of all  
24 complaints submitted to the Department of Elderly Affairs in  
25 accordance with s. 400.0075(3).

26           (3)(a) The State Long-Term Care Ombudsman Council  
27 shall be composed of a number of members equal to the number  
28 of district councils in the state plus three. Each district  
29 ombudsman council, ~~including the ombudsman councils for~~  
30 ~~subdistricts 3A and 3B,~~ shall appoint one member and the  
31 Governor shall appoint three members to the State Long-Term

1 Care Ombudsman Council. An individual designated by a  
2 district ombudsman council must have been a member of a  
3 district ombudsman council for at least 1 year, and shall  
4 continue to serve as an active member at the district level.  
5 The Governor's appointments shall be made from a list of not  
6 fewer than eight nominees, to be selected by the secretary in  
7 consultation with the State Long-Term Care Ombudsman Council  
8 and submitted to the Governor. If the appointments are not  
9 made within 30 days after the Governor receives the list of  
10 nominees, the secretary shall, in consultation with the State  
11 Long-Term Care Ombudsman Council, appoint three members from  
12 the list of nominees submitted to the Governor. At least one  
13 member appointed by the Governor must be over 60 years of age.

14 (b) All members shall be appointed to serve 3-year  
15 terms. Any vacancy shall be filled in the same manner as the  
16 original appointment. The position of any member missing  
17 three consecutive regular meetings without cause shall be  
18 declared vacant.

19 (c) The state ombudsman council shall elect a  
20 chairperson for a term of 1 year from among the members who  
21 have served for at least 1 year. The chairperson shall select  
22 a vice chairperson from among the members. The vice  
23 chairperson shall preside over the council in the absence of  
24 the chairperson.

25 (d) The state ombudsman council shall meet upon the  
26 call of the chairperson, at least quarterly or more frequently  
27 as needed.

28 (e) Members shall receive no compensation but shall be  
29 reimbursed for per diem and travel expenses as provided in s.  
30 112.061.

31

1           (4)(a) ~~Within 30 days after May 5, 1993,~~Each district  
2 ombudsman council shall appoint one member to the council and  
3 the secretary shall submit a list of not fewer than eight  
4 council nominees to the Governor.

5           (b) ~~Within 60 days after May 5, 1993,~~The Governor  
6 shall appoint three members to the council, or the provisions  
7 of paragraph (3)(a) shall apply.

8           (c) ~~The initial appointments shall be for staggered~~  
9 ~~terms. The members from districts 1, 2, 3A, 3B, and 4 shall~~  
10 ~~serve for 1 year; the members from districts 5, 6, 7, 8, and 9~~  
11 ~~shall serve for 2 years; and the members from districts 10 and~~  
12 ~~11 and the Governor's three appointees shall serve for 3~~  
13 ~~years. Thereafter, members shall be appointed and serve 3-year~~  
14 ~~terms as provided by this section.~~

15           (d) ~~Within 60 days after May 5, 1993, or as soon~~  
16 ~~thereafter as practicable, the State Long-Term Care Ombudsman~~  
17 ~~Council shall hold its first meeting and shall elect a~~  
18 ~~chairperson from among its members, without regard to the~~  
19 ~~minimum time served on the council. All other provisions of~~  
20 ~~paragraph (3)(c) shall apply.~~

21           (5) An ~~No~~ officer, employee, or representative of the  
22 Office of State Long-Term Care Ombudsman or of the State  
23 Long-Term Care Ombudsman Council, or ~~nor~~ any member of the  
24 immediate family of such officer, employee, or representative,  
25 may not have a conflict of interest. The Department of  
26 Elderly Affairs, in consultation with the ombudsman, shall  
27 adopt rules to identify and remove conflicts of interest.

28           (6) The Department of Elderly Affairs shall make a  
29 separate and distinct request for an appropriation for all  
30 expenses for the state and district ombudsman councils.

31

1           Section 5. Subsections (2), (4), (9), and (10) of  
2 section 400.0069, Florida Statutes, are amended to read:

3           400.0069 District long-term care ombudsman councils;  
4 duties; membership.--

5           (2) The duties of the district ombudsman council are:

6           (a) To serve as a third-party mechanism for protecting  
7 the health, safety, welfare, and civil and human rights of  
8 residents of a long-term care facility.

9           (b) To discover, investigate, and determine the  
10 existence of abuse or neglect in any long-term care facility  
11 and to use the procedures provided for in ss. 415.101-415.113  
12 when applicable. Investigations may consist, in part, of one  
13 or more onsite ~~administrative~~ inspections.

14           (c) To elicit, receive, investigate, respond to, and  
15 resolve complaints made by, or on behalf of, long-term care  
16 facility residents.

17           (d) To review and, if necessary, to comment on, for  
18 their effect on the rights of long-term care facility  
19 residents, all existing or proposed rules, regulations, and  
20 other governmental policies relating to long-term care  
21 facilities.

22           (e) To review personal property and money accounts of  
23 ~~Medicaid~~ residents pursuant to an investigation to obtain  
24 information regarding a specific complaint or problem.

25           (f) To represent the interests of residents before  
26 government agencies and to seek administrative, legal, and  
27 other remedies to protect the health, safety, welfare, and  
28 rights of the residents.

29           (g) To carry out other activities that the ombudsman  
30 determines to be appropriate.

31

1           (4) Each district ombudsman council shall be composed  
2 of no less than 15 members and no more than 30 members from  
3 the district, to include the following: one medical or  
4 osteopathic physician whose practice includes or has included  
5 a substantial number of geriatric patients and who may have  
6 limited practice in a long-term care facility; one registered  
7 nurse who has geriatric experience, if possible; one licensed  
8 pharmacist; one registered dietitian; at least six nursing  
9 home residents or representative consumer advocates for  
10 nursing home residents; at least three residents of assisted  
11 living facilities or adult family-care homes or three  
12 representative consumer advocates for long-term care facility  
13 residents; one attorney; and one professional social worker.  
14 In no case shall the medical director of a long-term care  
15 facility or an employee of the Agency for Health Care  
16 Administration, the Department of Children and Family Health  
17 ~~and Rehabilitative~~ Services, or the Department of Elderly  
18 Affairs serve as a member or as an ex officio member of a  
19 council. Each member of the council shall certify that  
20 neither the council member nor any member of the council  
21 member's immediate family has any conflict of interest  
22 pursuant to subsection (10). District ombudsman councils are  
23 encouraged to recruit council members who are 60 years of age  
24 or older.

25           (9) The district ombudsman councils may ~~are authorized~~  
26 ~~to~~ call upon appropriate agencies of state government for such  
27 professional assistance as may be needed in the discharge of  
28 their duties. All state agencies shall cooperate with the  
29 district ombudsman councils in providing requested information  
30 and requiring the attendance of agency representatives at  
31 council meetings when requested. The Department of Children

1 ~~and Family Health and Rehabilitative~~ Services shall continue  
2 to provide space and in-kind administrative support for each  
3 district ombudsman council staff within available resources  
4 until the Legislature appropriates funds for office space and  
5 administrative support.

6 (10) An ~~No~~ officer, employee, or representative of a  
7 district long-term care ombudsman council, or ~~nor~~ any member  
8 of the immediate family of such officer, employee, or  
9 representative, may not have a conflict of interest. The  
10 Department of Elderly Affairs, in consultation with the  
11 ombudsman, shall adopt rules to identify and remove conflicts  
12 of interest.

13 Section 6. Section 400.0071, Florida Statutes, is  
14 amended to read:

15 400.0071 Complaint procedures.--

16 (1) The state ombudsman council shall establish state  
17 and district procedures for receiving complaints against a  
18 ~~nursing home or long-term care facility or its employees~~  
19 employee.

20 (2) These procedures shall be posted in full view in  
21 every ~~nursing home or long-term care facility~~. Every resident  
22 or representative of a resident shall receive, upon admission  
23 to a ~~nursing home or long-term care facility~~, a printed copy  
24 of the procedures of the state and the district ombudsman  
25 councils.

26 Section 7. Subsections (1), (3), (4), and (5) of  
27 section 400.0073, Florida Statutes, are amended, and  
28 subsection (7) is added to that section, to read:

29 400.0073 State and district ombudsman council  
30 investigations.--

31



1 (1) A district ombudsman council shall investigate any  
2 complaint of a resident or representative of a resident based  
3 on an action by an administrator or employee of a ~~nursing home~~  
4 ~~or~~ long-term care facility which might be:

5 (a) Contrary to law.

6 (b) Unreasonable, unfair, oppressive, or unnecessarily  
7 discriminatory, even though in accordance with law.

8 (c) Based on a mistake of fact.

9 (d) Based on improper or irrelevant grounds.

10 (e) Unaccompanied by an adequate statement of reasons.

11 (f) Performed in an inefficient manner.

12 (g) Otherwise erroneous.

13 (3) Subsequent to an appeal from a district ombudsman  
14 council, the state ombudsman council may investigate any  
15 ~~nursing home or~~ long-term care facility.

16 (4) In addition to any specific investigation made  
17 pursuant to a complaint, the district ombudsman council shall  
18 conduct, at least annually, an investigation that must, ~~which~~  
19 ~~shall~~ consist, in part, of an onsite ~~administrative~~  
20 inspection, of each ~~nursing home or~~ long-term care facility  
21 within its jurisdiction. Such inspection must focus on the  
22 rights, health, safety, and welfare of the residents.

23 (5) Any onsite ~~administrative~~ inspection conducted by  
24 an ombudsman council shall be subject to the following:

25 (a) All inspections shall be at times and for  
26 durations necessary to produce the information required to  
27 carry out the duties of the council.

28 (b) ~~No~~ Advance notice of an inspection may not ~~shall~~  
29 be provided to any ~~nursing home or~~ long-term care facility,  
30 except that notice of followup inspections on specific  
31 problems may be provided.

1 (c) Inspections shall be conducted in a manner that  
2 ~~which~~ will not impose an no unreasonable burden on ~~nursing~~  
3 ~~homes~~ or long-term care facilities, consistent with the  
4 underlying purposes of this part. Unnecessary duplication of  
5 efforts among council members or the councils shall be reduced  
6 to the extent possible.

7 (d) Any ombudsman council member physically present  
8 for the inspection shall identify himself or herself and the  
9 statutory authority for his or her inspection of the facility.

10 (e) Inspections may not unreasonably interfere with  
11 the programs and activities of clients within the facility.  
12 Ombudsman council members shall respect the rights of  
13 residents.

14 (f) All inspections shall be limited to compliance  
15 with parts II, III, and VII of this chapter and 42 U.S.C. ss.  
16 1396(a) et seq., and any rules or regulations promulgated  
17 pursuant to such laws.

18 (g) An ~~No~~ ombudsman council member may not ~~shall~~ enter  
19 a single-family residential unit within a long-term care  
20 facility without the permission of the resident or the  
21 representative of the resident.

22 (h) Any inspection resulting from a specific complaint  
23 made to an ombudsman council concerning a facility shall be  
24 conducted within a reasonable time after the complaint is  
25 made.

26 (7) The district ombudsman shall immediately report to  
27 the adult protective services program of the Department of  
28 Children and Family Services any action or conduct by any  
29 long-term care facility that the council determines is a  
30 substantial threat to the health, safety, welfare, or rights  
31 of a resident of such long-term care facility that a district

1 ombudsman has inspected. As appropriate, the district  
2 ombudsman must notify the agency of such findings.

3 Section 8. Section 400.0075, Florida Statutes, is  
4 amended to read:

5 400.0075 Complaint resolution procedures.--

6 (1) Any complaint, including any problem identified by  
7 an ombudsman council as a result of an investigation, deemed  
8 valid and requiring remedial action by the district ombudsman  
9 council shall be identified and brought to the attention of  
10 the long-term care facility administrator and the agency in  
11 writing. Upon receipt of such document, the administrator, in  
12 concurrence with the district ombudsman council chair, shall  
13 establish target dates for taking appropriate remedial action.  
14 If, by the target date, the remedial action is not completed  
15 or forthcoming, the district ombudsman council may:

16 (a) Extend the target date if the council has reason  
17 to believe such action would facilitate the resolution of the  
18 complaint.

19 (b) In accordance with s. 400.0077, publicize the  
20 complaint, the recommendations of the council, and the  
21 response of the long-term care facility.

22 (c) Refer the complaint to the state ombudsman  
23 council.

24  
25 If the health, safety, welfare, or rights of the resident are  
26 in imminent danger, the district long-term care ombudsman  
27 council shall ~~may~~ seek immediate legal or administrative  
28 remedies to protect the resident and refer the complaint to  
29 the agency. The agency must immediately investigate any such  
30 complaint to determine whether this chapter has been violated.

31

1           (2) Upon referral from the district ombudsman council,  
2 the state ombudsman council shall assume the responsibility  
3 for the disposition of the complaint. If a long-term care  
4 facility fails to take action on a complaint found valid by  
5 the state ombudsman council, the state ombudsman council may:

6           (a) In accordance with s. 400.0077, publicize the  
7 complaint, the recommendations of the district ombudsman  
8 council and the state ombudsman council, any administrative  
9 action taken, and the response of the long-term care facility.

10           (b) Recommend to the agency a series of facility  
11 reviews pursuant to s. 400.19(4) to assure correction and  
12 nonrecurrence of conditions that give rise to complaints  
13 against a long-term care facility.

14           (c) Recommend to the agency changes in rules for  
15 inspecting and licensing or certifying long-term care  
16 facilities, ~~and recommend to the Department of Health and~~  
17 ~~Rehabilitative Services changes in rules for licensing and~~  
18 ~~regulating long-term care facilities.~~

19           (d) Refer the complaint to the state attorney for  
20 prosecution if there is reason to believe the long-term care  
21 facility or its employee is guilty of a criminal act.

22           (e) Refer the complaint to the Medicaid Fraud Control  
23 Unit of the Office of the Attorney General, if appropriate.

24           (f)~~(e)~~ Recommend to the agency ~~Department of Health~~  
25 ~~and Rehabilitative Services~~ that the long-term care facility  
26 no longer receive payments under the State Medical Assistance  
27 Program (Medicaid).

28           (g)~~(f)~~ Recommend that the agency initiate procedures  
29 for revocation of license in accordance with chapter 120.

30  
31

1            ~~(h)(g)~~ Seek legal, administrative, or other remedies  
2 to protect the health, safety, welfare, or rights of the  
3 resident.

4  
5 If the health, safety, welfare, or rights of the resident are  
6 in imminent danger, the State Long-Term Care Ombudsman Council  
7 shall seek immediate legal or administrative remedies to  
8 protect the resident.

9            (3) The state ombudsman council shall provide, as part  
10 of its annual report required pursuant to s. 400.0067(2)(h),  
11 information relating to the disposition of all complaints to  
12 the Department of Elderly Affairs, including those brought to  
13 the attention of the agency pursuant to subsection (1).

14            Section 9. Subsection (1) of section 400.0081, Florida  
15 Statutes, is amended to read:

16            400.0081 Access.--

17            (1) The Office of State Long-Term Care Ombudsman, the  
18 State Long-Term Care Ombudsman Council, and the district  
19 long-term care ombudsman councils, or their members  
20 ~~representatives~~, shall have access to:

21            (a) Long-term care facilities and residents.

22            (b) Medical and social records of a resident for  
23 review, if:

24            1. The office or a council member has the permission  
25 of the resident or the legal representative of the resident;

26 or

27            2. The resident is unable to consent to the review and  
28 has no legal representative.

29            (c) Medical and social records of the resident as  
30 necessary to investigate a complaint, if:

31

1           1. A legal guardian of the resident refuses to give  
2 permission.

3           2. The office or a council member has reasonable cause  
4 to believe that the guardian is not acting in the best  
5 interests of the resident.

6           3. The council member ~~representative~~ obtains the  
7 approval of the ombudsman.

8           (d) The administrative records, policies, and  
9 documents to which the residents, or the general public, have  
10 access.

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

14           (f) All notices of discharge or transfer processed by  
15 a long-term care facility regardless of ultimate disposition.

16           Section 10. Section 400.0089, Florida Statutes, is  
17 amended to read:

18           400.0089 Agency reports.--The State Long-Term Care  
19 Ombudsman Council, shall, in cooperation with the Department  
20 of Elderly Affairs, maintain a statewide uniform reporting  
21 system to collect and analyze data relating to complaints and  
22 conditions in long-term care facilities and to residents, for  
23 the purpose of identifying and resolving significant problems.  
24 The council shall submit such data as part of its annual  
25 report required pursuant to s. 400.0067(2)(h) to the agency  
26 ~~for Health Care Administration~~, the Department of Children and  
27 Family Health and Rehabilitative Services, the Statewide Human  
28 Rights Advocacy Committee, the Advocacy Center for Persons  
29 with Disabilities, the Commissioner for the United States  
30 Administration on Aging, the National Ombudsman Resource

31

1 Center, and any other state or federal entities that the  
2 ombudsman determines appropriate.

3 Section 11. Section 400.0091, Florida Statutes, is  
4 amended to read:

5 400.0091 Training.--The ombudsman shall provide  
6 appropriate training to all employees of the Office of State  
7 Long-Term Care Ombudsman and to the state and district  
8 long-term care ombudsman councils, including all unpaid  
9 volunteers. An ~~The ombudsman shall implement the training~~  
10 ~~program no later than June 1, 1994.~~ No employee, officer, or  
11 representative of the office or of the state or district  
12 long-term care ombudsman councils, other than the ombudsman,  
13 may not carry out any authorized ombudsman duty or  
14 responsibility unless the person has received the training  
15 required by this section and has been approved by the  
16 ombudsman as qualified to carry out ombudsman activities on  
17 behalf of the office or the state or district long-term care  
18 ombudsman councils.

19 Section 12. Subsection (6) of section 400.021, Florida  
20 Statutes, is amended to read:

21 400.021 Definitions.--When used in this part, unless  
22 the context otherwise requires, the term:

23 (6) "Department" means the Department of Children and  
24 Family Health and Rehabilitative Services.

25 Section 13. Subsection (1) of section 400.022, Florida  
26 Statutes, is amended to read:

27 400.022 Residents' rights.--

28 (1) All licensees of nursing home facilities shall  
29 adopt and make public a statement of the rights and  
30 responsibilities of the residents of such facilities and shall  
31 treat such residents in accordance with the provisions of that

1 statement. The statement shall assure each resident the  
2 following:

3 (a) The right to civil and religious liberties,  
4 including knowledge of available choices and the right to  
5 independent personal decision, which will not be infringed  
6 upon, and the right to encouragement and assistance from the  
7 staff of the facility in the fullest possible exercise of  
8 these rights.

9 (b) The right to private and uncensored communication,  
10 including, but not limited to, receiving and sending unopened  
11 correspondence, access to a telephone, visiting with any  
12 person of the resident's choice during visiting hours, and  
13 overnight visitation outside the facility with family and  
14 friends in accordance with facility policies, physician  
15 orders, and Title XVIII (Medicare) and Title XIX (Medicaid) of  
16 the Social Security Act regulations, without the resident's  
17 losing his or her bed. Facility visiting hours shall be  
18 flexible, taking into consideration special circumstances such  
19 as, but not limited to, out-of-town visitors and working  
20 relatives or friends. Unless otherwise indicated in the  
21 resident care plan, the licensee shall, with the consent of  
22 the resident and in accordance with policies approved by the  
23 agency, permit recognized volunteer groups, representatives of  
24 community-based legal, social, mental health, and leisure  
25 programs, and members of the clergy access to the facility  
26 during visiting hours for the purpose of visiting with and  
27 providing services to any resident.

28 (c) Any entity or individual that provides health,  
29 social, legal, or other services to a resident has the right  
30 to have reasonable access to the resident. The resident has  
31 the right to deny or withdraw consent to access at any time by



1 any entity or individual. Notwithstanding the visiting policy  
2 of the facility, the following individuals must be permitted  
3 immediate access to the resident:

4 1. Any representative of the federal or state  
5 government, including, but not limited to, representatives of  
6 the Department of Children and Family Health and  
7 ~~Rehabilitative~~ Services, the Agency for Health Care  
8 Administration, and the Department of Elderly Affairs; any law  
9 enforcement officer; members of the state or district  
10 ombudsman council; and the resident's individual physician.

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

13  
14 The facility must allow representatives of the state and  
15 district long-term care ombudsman councils ~~State Nursing Home~~  
16 ~~and Long-Term Care Facility Ombudsman Council~~ to examine a  
17 resident's clinical records with the permission of the  
18 resident or the resident's legal representative and consistent  
19 with state law.

20 (d) The right to present grievances on behalf of  
21 himself or herself or others to the staff or administrator of  
22 the facility, to governmental officials, or to any other  
23 person; to recommend changes in policies and services to  
24 facility personnel; and to join with other residents or  
25 individuals within or outside the facility to work for  
26 improvements in resident care, free from restraint,  
27 interference, coercion, discrimination, or reprisal. This  
28 right includes access to ombudsmen and advocates and the right  
29 to be a member of, to be active in, and to associate with  
30 advocacy or special interest groups. The right also includes  
31 the right to prompt efforts by the facility to resolve

1 resident grievances, including grievances with respect to the  
2 behavior of other residents.

3 (e) The right to organize and participate in resident  
4 groups in the facility and the right to have the resident's  
5 family meet in the facility with the families of other  
6 residents.

7 (f) The right to participate in social, religious, and  
8 community activities that do not interfere with the rights of  
9 other residents.

10 (g) The right to examine, upon reasonable request, the  
11 results of the most recent inspection of the facility  
12 conducted by a federal or state agency and any plan of  
13 correction in effect with respect to the facility.

14 (h) The right to manage his or her own financial  
15 affairs or to delegate such responsibility to the licensee,  
16 but only to the extent of the funds held in trust by the  
17 licensee for the resident. A quarterly accounting of any  
18 transactions made on behalf of the resident shall be furnished  
19 to the resident or the person responsible for the resident.  
20 The facility may not require a resident to deposit personal  
21 funds with the facility. However, upon written authorization  
22 of a resident, the facility must hold, safeguard, manage, and  
23 account for the personal funds of the resident deposited with  
24 the facility as follows:

25 1. The facility must establish and maintain a system  
26 that ensures a full, complete, and separate accounting,  
27 according to generally accepted accounting principles, of each  
28 resident's personal funds entrusted to the facility on the  
29 resident's behalf.

30 2. The accounting system established and maintained by  
31 the facility must preclude any commingling of resident funds

1 with facility funds or with the funds of any person other than  
2 another resident.

3 3. A quarterly accounting of any transaction made on  
4 behalf of the resident shall be furnished to the resident or  
5 the person responsible for the resident.

6 4. Upon the death of a resident with personal funds  
7 deposited with the facility, the facility must convey within  
8 30 days the resident's funds, including interest, and a final  
9 accounting of those funds, to the individual or probate  
10 jurisdiction administering the resident's estate, or, if a  
11 personal representative has not been appointed within 30 days,  
12 to the resident's spouse or adult next of kin named in the  
13 beneficiary designation form provided for in s. 400.162(6).

14 5. The facility may not impose a charge against the  
15 personal funds of a resident for any item or service for which  
16 payment is made under Title XVIII or Title XIX of the Social  
17 Security Act.

18 (i) The right to be fully informed, in writing and  
19 orally, prior to or at the time of admission and during his or  
20 her stay, of services available in the facility and of related  
21 charges for such services, including any charges for services  
22 not covered under Title XVIII or Title XIX of the Social  
23 Security Act or not covered by the basic per diem rates and of  
24 bed reservation and refund policies of the facility.

25 (j) The right to be adequately informed of his or her  
26 medical condition and proposed treatment, unless the resident  
27 is determined to be unable to provide informed consent under  
28 Florida law, or the right to be fully informed in advance of  
29 any nonemergency changes in care or treatment that may affect  
30 the resident's well-being; and, except with respect to a  
31 resident adjudged incompetent, the right to participate in the

1 | planning of all medical treatment, including the right to  
2 | refuse medication and treatment, unless otherwise indicated by  
3 | the resident's physician; and to know the consequences of such  
4 | actions.

5 |         (k) The right to refuse medication or treatment and to  
6 | be informed of the consequences of such decisions, unless  
7 | determined unable to provide informed consent under state law.  
8 | When the resident refuses medication or treatment, the nursing  
9 | home facility must notify the resident or the resident's legal  
10 | representative of the consequences of such decision and must  
11 | document the resident's decision in his or her medical record.  
12 | The nursing home facility must continue to provide other  
13 | services the resident agrees to in accordance with the  
14 | resident's care plan.

15 |         (l) The right to receive adequate and appropriate  
16 | health care and protective and support services, including  
17 | social services; mental health services, if available; planned  
18 | recreational activities; and therapeutic and rehabilitative  
19 | services consistent with the resident care plan, with  
20 | established and recognized practice standards within the  
21 | community, and with rules as adopted by the agency.

22 |         (m) The right to have privacy in treatment and in  
23 | caring for personal needs; to close room doors and to have  
24 | facility personnel knock before entering the room, except in  
25 | the case of an emergency or unless medically contraindicated;  
26 | and to security in storing and using personal possessions.  
27 | Privacy of the resident's body shall be maintained during, but  
28 | not limited to, toileting, bathing, and other activities of  
29 | personal hygiene, except as needed for resident safety or  
30 | assistance. Residents' personal and medical records shall be  
31 | confidential and exempt from the provisions of s. 119.07(1).

1           (n) The right to be treated courteously, fairly, and  
2 with the fullest measure of dignity and to receive a written  
3 statement and an oral explanation of the services provided by  
4 the licensee, including those required to be offered on an  
5 as-needed basis.

6           (o) The right to be free from mental and physical  
7 abuse, corporal punishment, extended involuntary seclusion,  
8 and from physical and chemical restraints, except those  
9 restraints authorized in writing by a physician for a  
10 specified and limited period of time or as are necessitated by  
11 an emergency. In case of an emergency, restraint may be  
12 applied only by a qualified licensed nurse who shall set forth  
13 in writing the circumstances requiring the use of restraint,  
14 and, in the case of use of a chemical restraint, a physician  
15 shall be consulted immediately thereafter. Restraints may not  
16 be used in lieu of staff supervision or merely for staff  
17 convenience, for punishment, or for reasons other than  
18 resident protection or safety.

19           (p) The right to be transferred or discharged only for  
20 medical reasons or for the welfare of other residents, and the  
21 right to be given reasonable advance notice of not ~~no~~ less  
22 than 30 days before ~~of~~ any involuntary transfer or discharge,  
23 except in the case of an emergency as determined by a licensed  
24 professional on the staff of the nursing home, or in the case  
25 of conflicting rules and regulations which govern Title XVIII  
26 or Title XIX of the Social Security Act. For nonpayment of a  
27 bill for care received, the resident shall be given 30 days'  
28 advance notice. A licensee certified to provide services  
29 under Title XIX of the Social Security Act may not transfer or  
30 discharge a resident solely because the source of payment for  
31 care changes. Admission to a nursing home facility operated

1 by a licensee certified to provide services under Title XIX of  
2 the Social Security Act may not be conditioned upon a waiver  
3 of such right, and any document or provision in a document  
4 which purports to waive or preclude such right is void and  
5 unenforceable. Any licensee certified to provide services  
6 under Title XIX of the Social Security Act that obtains or  
7 attempts to obtain such a waiver from a resident or potential  
8 resident shall be construed to have violated the resident's  
9 rights as established herein and is subject to disciplinary  
10 action as provided in subsection (3). The resident and the  
11 family or representative of the resident shall be consulted in  
12 choosing another facility.

13 (q) The right to freedom of choice in selecting a  
14 personal physician; to obtain pharmaceutical supplies and  
15 services from a pharmacy of the resident's choice, at the  
16 resident's own expense or through Title XIX of the Social  
17 Security Act; and to obtain information about, and to  
18 participate in, community-based activities programs, unless  
19 medically contraindicated as documented by a physician in the  
20 resident's medical record. If a resident chooses to use a  
21 community pharmacy and the facility in which the resident  
22 resides uses a unit-dose system, the pharmacy selected by the  
23 resident shall be one that provides a compatible unit-dose  
24 system, provides service delivery, and stocks the drugs  
25 normally used by long-term care residents. If a resident  
26 chooses to use a community pharmacy and the facility in which  
27 the resident resides does not use a unit-dose system, the  
28 pharmacy selected by the resident shall be one that provides  
29 service delivery and stocks the drugs normally used by  
30 long-term care residents.

31

1           (r) The right to retain and use personal clothing and  
2 possessions as space permits, unless to do so would infringe  
3 upon the rights of other residents or unless medically  
4 contraindicated as documented in the resident's medical record  
5 by a physician. If clothing is provided to the resident by  
6 the licensee, it shall be of reasonable fit.

7           (s) The right to have copies of the rules and  
8 regulations of the facility and an explanation of the  
9 responsibility of the resident to obey all reasonable rules  
10 and regulations of the facility and to respect the personal  
11 rights and private property of the other residents.

12           (t) The right to receive written notice before the  
13 room of the resident in the facility is changed. However, a  
14 resident may be moved to another room in the facility for  
15 medically necessary care without the need of a written notice  
16 if, before the move, the medical director of the facility or  
17 the resident's attending physician consults with the resident  
18 or the resident's designee. A resident, or the resident's  
19 designee, may give notice of his or her refusal to be moved by  
20 providing a written statement of such refusal to the nursing  
21 home administrator.

22           (u) The right to be informed of the bed reservation  
23 policy for a hospitalization. The nursing home shall inform a  
24 private-pay resident and his or her responsible party that his  
25 or her bed will be reserved for any single hospitalization for  
26 a period up to 30 days provided the nursing home receives  
27 reimbursement. Any resident who is a recipient of assistance  
28 under Title XIX of the Social Security Act, or the resident's  
29 designee or legal representative, shall be informed by the  
30 licensee that his or her bed will be reserved for any single  
31 hospitalization for the length of time for which Title XIX

1 reimbursement is available, up to 8 ~~15~~ days; but that the bed  
2 will not be reserved if it is medically determined by the  
3 agency that the resident will not need it or will not be able  
4 to return to the nursing home, or if the agency determines  
5 that the nursing home's occupancy rate ensures the  
6 availability of a bed for the resident. Notice shall be  
7 provided within 24 hours of the hospitalization.

8 (v) For residents of Medicaid or Medicare certified  
9 facilities, the right to challenge a decision by the facility  
10 to discharge or transfer the resident, as required under Title  
11 42 C.F.R. part 483.12 ~~483.13~~.

12 Section 14. Section 400.0255, Florida Statutes, is  
13 amended to read:

14 400.0255 Resident hearings of facility decisions to  
15 transfer or discharge.--

16 (1) As used in this section, the term:

17 (a) "Discharge" means to move a resident to a  
18 noninstitutional setting when the releasing facility ceases to  
19 be responsible for the resident's care.

20 (b) "Transfer" means to move a resident from the  
21 facility to another legally responsible institutional setting.

22 ~~"discharge" or "transfer" means the movement of a resident to~~  
23 ~~a bed outside the certified facility. "Discharge" or~~  
24 ~~"transfer" does not refer to the movement of a resident to a~~  
25 ~~bed within the same certified facility.~~

26 (2) Each facility licensed under this part must comply  
27 with s. 400.022(1)(p) and subsection (8) when deciding to  
28 discharge or transfer a resident.

29 (3) When a resident is to be discharged or  
30 transferred, the nursing home administrator employed by the  
31 nursing home that is discharging or transferring the resident,



1 or an individual employed by the nursing home who is  
2 designated by the nursing home administrator to act on behalf  
3 of the administrator, must sign the notice of discharge or  
4 transfer. Any notice indicating a medical reason for transfer  
5 or discharge must be signed by the resident's attending  
6 physician or the medical director of the facility.

7 (4)(a) Each facility must notify the agency of any  
8 proposed discharge or transfer of a resident when such  
9 discharge or transfer is necessitated by changes in the  
10 physical plant of the facility which make the facility unsafe  
11 for the resident.

12 (b) Upon receipt of such a notice the agency shall  
13 conduct an onsite inspection of the facility to verify the  
14 necessity of the discharge or transfer.

15 (5)(2) A resident of any Medicaid or Medicare  
16 certified facility may challenge a decision by the facility to  
17 discharge or transfer the resident.

18 (6)(3) At least 30 days prior to any proposed transfer  
19 or discharge, a facility must provide advance notice of the  
20 proposed transfer or discharge to the resident and, if known,  
21 to a family member or the resident's legal guardian or  
22 representative, except, in the following circumstances, the  
23 facility shall give notice as soon as practicable before the  
24 transfer or discharge:

25 (a) The transfer or discharge is necessary for the  
26 resident's welfare and the resident's needs cannot be met in  
27 the facility, and the circumstances are documented in the  
28 resident's medical records by the resident's physician; or

29 (b) The health or safety of other residents or  
30 facility employees would be endangered, and the circumstances  
31 are documented in the resident's medical records by the

1 resident's physician or the medical director if the resident's  
2 physician is not available.

3 (7)(4) The notice required by subsection (6)(3) must  
4 be in writing and must contain all information required by  
5 state and federal law, rules, or regulations applicable to  
6 Medicaid or Medicare cases. The agency shall develop a  
7 standard and uniform document to be used by all facilities  
8 licensed under this part for purposes of notifying residents  
9 of a discharge or transfer. Such document must include a means  
10 for a resident to request a local district ombudsman to review  
11 the notice and request information about or assistance with  
12 initiating a fair hearing with the department's Office of  
13 Appeals Hearings. A copy of the notice must be placed in the  
14 resident's clinical record, and a copy must be transmitted to  
15 the resident's legal guardian or representative and to the  
16 local district ombudsman council.

17 (8) A resident may request that a local district  
18 ombudsman review any notice of discharge or transfer given to  
19 the resident. When requested by a resident to review a notice  
20 of discharge or transfer, the local district ombudsman shall  
21 do so within 7 days after receipt of the request. The nursing  
22 home administrator, or the administrator's designee, must  
23 forward the request for review contained in the notice to the  
24 local district ombudsman within 24 hours after such request is  
25 submitted. Failure to forward the request within 24 hours  
26 after the request is submitted shall toll the start of the  
27 30-day advance notice period.

28 (9)(5)(a) A resident is entitled to a fair hearing to  
29 challenge a facility's proposed transfer or discharge. The  
30 resident, or the resident's legal representative or designee,  
31 may request a hearing at any time within 90 days after of the

1 resident's receipt of the facility's notice of the proposed  
2 discharge or transfer.

3 (b) If a resident requests a hearing within 10 days  
4 after ~~of~~ receiving the notice from the facility, the request  
5 shall stay the proposed transfer or discharge pending a  
6 hearing decision. The facility may not take action, and the  
7 resident may remain in the facility, until the outcome of the  
8 initial fair hearing, which must be completed within 90 days  
9 after ~~of~~ receipt of a request for a fair hearing.

10 (c) If the resident fails to request a hearing within  
11 10 days after ~~of~~ receipt of the facility notice of the  
12 proposed discharge or transfer, the facility may transfer or  
13 discharge the resident after 30 days from the date the  
14 resident received the notice.

15 ~~(10)(6)~~ Notwithstanding paragraph ~~(9)(b)(5)(b)~~, an  
16 emergency discharge or transfer may be implemented as  
17 necessary pursuant to state or federal law during the period  
18 of time after the notice is given and before the time a  
19 hearing decision is rendered. Notice of an emergency discharge  
20 or transfer to the resident, the resident's legal guardian or  
21 representative, and the local district ombudsman if requested  
22 pursuant to s. 400.0255(8) must be by telephone or in person.  
23 This notice shall be given before the transfer, if possible,  
24 or as soon thereafter as practicable. A local district  
25 ombudsman conducting a review under this subsection shall do  
26 so within 24 hours after receipt of the request. The  
27 resident's file must be documented to show who was contacted,  
28 whether the contact was by telephone or in person, and the  
29 date and time of the contact. If the notice is not given in  
30 writing, written notice meeting the requirements of subsection  
31 (4) must be given the next working day.

1       (11) After receipt of any notice required under this  
2 section, the local district ombudsman may request a private  
3 informal conversation with a resident to whom the notice is  
4 directed, and, if known, a family member or the resident's  
5 legal guardian or designee, to ensure that the facility is  
6 proceeding with the discharge or transfer in accordance with  
7 the requirements of this section. If requested, the local  
8 district ombudsman shall assist the resident with filing an  
9 appeal of the proposed discharge or transfer.

10       (12)~~(7)~~ The following persons must be present at all  
11 proceedings authorized under this section:

12           (a) The resident, or the resident's legal  
13 representative or designee.

14           (b) The facility administrator, or the facility's  
15 legal representative or designee.

16  
17 A representative of the district long-term care ombudsman  
18 council may be present at all proceedings authorized by this  
19 section.

20       (13)~~(8)~~ In any proceeding under this section, the  
21 following information concerning the parties shall be  
22 confidential and exempt from the provisions of s. 119.07(1):

23           (a) Names and addresses.

24           (b) Medical services provided.

25           (c) Social and economic conditions or circumstances.

26           (d) Evaluation of personal information.

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

29           (f) Any information received verifying income  
30 eligibility and amount of medical assistance payments. Income  
31 information received from the Social Security Administration

1 or the Internal Revenue Service must be safeguarded according  
2 to the requirements of the agency that furnished the data.

3

4 The exemption created by this subsection does not prohibit  
5 access to such information by a district long-term care  
6 ombudsman council upon request, by a reviewing court if such  
7 information is required to be part of the record upon  
8 subsequent review, or as specified in s. 24(a), Art. I of the  
9 State Constitution.

10 (14)~~(9)~~(a) The department's Office of Appeals Hearings  
11 shall conduct hearings under this section. The office shall  
12 notify the facility of a resident's request for a hearing.

13 (b) The department shall, by rule, establish  
14 procedures to be used for fair hearings requested by  
15 residents. These procedures shall be equivalent to the  
16 procedures used for fair hearings for other Medicaid cases,  
17 chapter 10-2, part VI, Florida Administrative Code. The  
18 burden of proof must be clear and convincing evidence. A  
19 hearing decision must be rendered within 90 days after ~~of~~  
20 receipt of the request for hearing.

21 (15)~~(10)~~ If the hearing decision is favorable to the  
22 resident who has been transferred or discharged, the resident  
23 must be readmitted to the facility's first available bed.

24 (16)~~(11)~~ The decision of the hearing officer shall be  
25 final. Any aggrieved party may appeal the decision to the  
26 district court of appeal in the appellate district where the  
27 facility is located. Review procedures shall be conducted in  
28 accordance with the Florida Rules of Appellate Procedure.

29 (17)~~(12)~~ The department may adopt rules necessary to  
30 administer ~~implement the provisions of~~ this section.

31

1 Section 15. Subsection (1) of section 468.1755,  
2 Florida Statutes, 1998 Supplement, is amended to read:

3 468.1755 Disciplinary proceedings.--

4 (1) The following acts shall constitute grounds for  
5 which the disciplinary actions in subsection (2) may be taken:

6 (a) Violation of any provision of s. 455.624(1) or s.  
7 468.1745(1).

8 (b) Attempting to procure a license to practice  
9 nursing home administration by bribery, by fraudulent  
10 misrepresentation, or through an error of the department or  
11 the board.

12 (c) Having a license to practice nursing home  
13 administration revoked, suspended, or otherwise acted against,  
14 including the denial of licensure, by the licensing authority  
15 of another state, territory, or country.

16 (d) Being convicted or found guilty, regardless of  
17 adjudication, of a crime in any jurisdiction which relates to  
18 the practice of nursing home administration or the ability to  
19 practice nursing home administration. Any plea of nolo  
20 contendere shall be considered a conviction for purposes of  
21 this part.

22 (e) Making or filing a report or record which the  
23 licensee knows to be false, intentionally failing to file a  
24 report or record required by state or federal law, willfully  
25 impeding or obstructing such filing, or inducing another  
26 person to impede or obstruct such filing. Such reports or  
27 records shall include only those which are signed in the  
28 capacity of a licensed nursing home administrator.

29 (f) Authorizing the discharge or transfer of a  
30 resident for a reason other than those provided in ss. 400.022  
31 and 400.0255.

1           (g)~~(f)~~ Advertising goods or services in a manner which  
2 is fraudulent, false, deceptive, or misleading in form or  
3 content.

4           (h)~~(g)~~ Fraud or deceit, negligence, incompetence, or  
5 misconduct in the practice of nursing home administration.

6           (i)~~(h)~~ A violation or repeated violations of this  
7 part, part II of chapter 455, or any rules promulgated  
8 pursuant thereto.

9           (j)~~(i)~~ Violation of a lawful order of the board or  
10 department previously entered in a disciplinary hearing or  
11 failing to comply with a lawfully issued subpoena of the board  
12 or department.

13           (k)~~(j)~~ Practicing with a revoked, suspended, inactive,  
14 or delinquent license.

15           (l)~~(k)~~ Repeatedly acting in a manner inconsistent with  
16 the health, safety, or welfare of the patients of the facility  
17 in which he or she is the administrator.

18           (m)~~(l)~~ Being unable to practice nursing home  
19 administration with reasonable skill and safety to patients by  
20 reason of illness, drunkenness, use of drugs, narcotics,  
21 chemicals, or any other material or substance or as a result  
22 of any mental or physical condition. In enforcing this  
23 paragraph, upon a finding of the secretary or his or her  
24 designee that probable cause exists to believe that the  
25 licensee is unable to serve as a nursing home administrator  
26 due to the reasons stated in this paragraph, the department  
27 shall have the authority to issue an order to compel the  
28 licensee to submit to a mental or physical examination by a  
29 physician designated by the department. If the licensee  
30 refuses to comply with such order, the department's order  
31 directing such examination may be enforced by filing a

1 petition for enforcement in the circuit court where the  
2 licensee resides or serves as a nursing home administrator.  
3 The licensee against whom the petition is filed shall not be  
4 named or identified by initials in any public court records or  
5 documents and the proceedings shall be closed to the public.  
6 The department shall be entitled to the summary procedure  
7 provided in s. 51.011. A licensee affected under this  
8 paragraph shall have the opportunity, at reasonable intervals,  
9 to demonstrate that he or she can resume the competent  
10 practice of nursing home administration with reasonable skill  
11 and safety to patients.

12        ~~(n)(m) Has~~ Willfully or repeatedly violating ~~violated~~  
13 any of the provisions of the law, code or rules of the  
14 licensing or supervising authority or agency of the state or  
15 political subdivision thereof having jurisdiction of the  
16 operation and licensing of nursing homes.

17        ~~(o)(n) Paying, giving, causing~~ Has paid, given, caused  
18 to be paid or given, or offering ~~offered~~ to pay or to give to  
19 any person a commission or other valuable consideration for  
20 the solicitation or procurement, either directly or  
21 indirectly, of nursing home usage.

22        ~~(p)(o) Has~~ Willfully permitting ~~permitted~~ unauthorized  
23 disclosure of information relating to a patient or his or her  
24 records.

25        ~~(q)(p) Discriminating with~~ Has discriminated in  
26 respect to patients, employees, or staff on account of race,  
27 religion, color, sex, or national origin.

28        Section 16. Paragraph (b) of subsection (1) of section  
29 394.4625, Florida Statutes, is amended to read:

30        394.4625 Voluntary admissions.--

31        (1) AUTHORITY TO RECEIVE PATIENTS.--



1 (b) A mental health overlay program or a mobile crisis  
2 response service or a licensed professional who is authorized  
3 to initiate an involuntary examination pursuant to s. 394.463  
4 and is employed by a community mental health center or clinic  
5 must, pursuant to district procedure approved by the  
6 respective district administrator, conduct an initial  
7 assessment of the ability of the following persons to give  
8 express and informed consent to treatment before such persons  
9 may be admitted voluntarily:

10 1. A person 60 years of age or older for whom transfer  
11 is being sought from a nursing home, assisted living facility,  
12 adult day care center, or adult family-care home, when such  
13 person has been diagnosed as suffering from dementia.

14 2. A person 60 years of age or older for whom transfer  
15 is being sought from a nursing home pursuant to s.  
16 400.0255(10)~~s. 400.0255(6)~~.

17 3. A person for whom all decisions concerning medical  
18 treatment are currently being lawfully made by the health care  
19 surrogate or proxy designated under chapter 765.

20 Section 17. Section 468.1756, Florida Statutes, 1998  
21 Supplement, is amended to read:

22 468.1756 Statute of limitations.--An administrative  
23 complaint may only be filed pursuant to s. 455.621 for an act  
24 listed in s. 468.1755(1)(c)-(q)~~paragraphs (1)(c)-(p) of s.~~  
25 ~~468.1755~~ within 4 years from the time of the incident giving  
26 rise to the complaint, or within 4 years from the time the  
27 incident is discovered or should have been discovered.

28 Section 18. The sum of \$100,000 is appropriated from  
29 the Health Care Trust Fund to the Department of Elderly  
30 Affairs for the 1999-2000 fiscal year to enable the Office of  
31 State Long-Term Care Ombudsman to carry out the duties

1 assigned to the district long-term care ombudsman councils as  
2 provided in this act and for establishing a toll-free  
3 telephone number.

4 Section 19. This act shall take effect July 1, 1999.

6 \*\*\*\*\*

7 SENATE SUMMARY

8 Revises various provisions of parts I and II of ch. 400,  
9 F.S., which govern the operation of long-term care  
10 facilities and nursing homes. Clarifies certain  
11 provisions that prohibit conflicts of interest by  
12 members, employees, or representatives of the state or  
13 district long-term care ombudsman councils. Revises  
14 certain duties of the ombudsman councils. Revises  
15 requirements for inspections of long-term care  
16 facilities. Requires that the Agency for Health Care  
17 Administration investigate certain complaints against a  
18 long-term care facility. Revises the required procedures  
19 for transferring or discharging a nursing home resident.  
20 Provides requirements for reviewing a notice of discharge  
21 or transfer. Authorizes disciplinary proceedings for  
22 unlawfully discharging or transferring such a resident.  
23 (See bill for details.)  
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