

STORAGE NAME: h1539s1a.hhs

DATE: April 5, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
HEALTH AND HUMAN SERVICES APPROPRIATIONS
ANALYSIS**

BILL #: CS/HB 1539 (PCB LT 00-02)

RELATING TO: Long-term Care Ombudsman Program

SPONSOR(S): Committee on Governmental Rules & Regulations, Committee on Elder Affairs & Long Term Care, Representative Argenziano & others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELDER AFFAIRS & LONG TERM CARE YEAS 8 NAYS 0
 - (2) GOVERNMENTAL RULES & REGULATIONS YEAS 6 NAYS 0
 - (3) HEALTH AND HUMAN SERVICES APPROPRIATIONS YEAS 11 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

The Office of the State Long-term Care Ombudsman is directed to prepare and submit annual budget requests. The bill re-designates the Long-Term Care (LTC) Ombudsman Councils operating in the various Department of Elderly Affairs (DOEA or department) Planning and Service Areas (PSAs) of the state as *local* rather than *district* councils.

The bill revises the procedure for appointments to be made to the State Long-term Care Ombudsman Council and provides that the decision of the Ombudsman is final when determining whether a member's three consecutive unexcused absences were without cause for purposes of determining if a vacancy exists. The bill limits membership on the State Council to two three-year terms.

The bill provides for an appropriation from General Revenue of \$40,000 for training of newly appointed state and local ombudsman and an appropriation of \$40,000 for materials regarding public education and awareness training. Removes the requirement that the Department of Children and Family Services (DCFS) provide space and in-kind support to the Ombudsman program.

The Ombudsman is to enter into a cooperative agreement with the Medicaid Fraud Division of the Attorney General's Office. Provides additional detail about administrative support (office space, assistance with personnel, accosting, information systems); provides that DOEA is to meet the costs of providing administrative support to the Ombudsman from appropriated funds; specifies that DOEA should capture these costs when preparing its Legislative Budget Request; and specifies the percentage of federal program funds which can be diverted to run the department.

The law becomes effective July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

According to the Oxford English Dictionary the English "ombudsman" is derived from the Swedish word, *ombud*, a commissioner or agent. Further reading provides that *ombud* comes from the Old Norse words *umbod* meaning charge, commission, and *umboðsmaðr* commissary, or manager which means:

...a public official appointed to investigate citizens' complaints against local or national government agencies that may be infringing on the rights of individuals.

In the context of long term care, the Ombudsman program began as a federal demonstration project operated in five states. In 1973, the projects were formally assigned to the Administration on Aging (AoA) within HHS. In 1978, Congress codified the Ombudsman Program in the Older Americans Act. Title VII of the Older Americans Act delineates the following responsibilities for Ombudsmen:

- identify, investigate and resolve complaints made by or on behalf of residents;
- provide information to residents about long-term care services;
- represent the interests of residents before governmental agencies and seek administrative, legal and other remedies to protect residents;
- analyze, comment on and recommend changes in laws and regulations pertaining to the health, safety, welfare and rights of residents;
- educate and inform consumers and the general public regarding issues and concerns related to long-term care and facilitate public comment on laws, regulations, policies and actions;
- promote the development of citizen organizations to participate in the program; and,
- provide technical support for the development of resident and family councils to protect the well-being and rights of residents.

Placement of Ombudsman Programs in State-Level Governments

All 50 states, the District of Columbia, and Puerto Rico have long term care ombudsman programs. In each locale, the Ombudsman program has been organized slightly differently. Forty-two states have placed the Office of the State LTC Ombudsman program within the

state unit on aging (SUA). In some areas, the Ombudsman programs operate completely outside of the state-level government.

Older American's Act Codified Ombudsman Program

In 1992, Congress reauthorized the Older American's Act and included a directive to the Assistant Secretary for Aging that an in-depth examination of the program was warranted.

The AoA contracted with the Institute of Medicine (IOM). In October 1993, the IOM evaluated and addressed important aspects of the LTC Ombudsman program: specifically, the LTC ombudsmen's ability to deal with problems that affect the care provided to, and the quality of life achieved by, elderly residents of LTC facilities. The IOM concluded its evaluation of the national programs with observations and suggestions that fell into eight broad areas:

- Lack of access to program
- Lack of program visibility
- Inadequate legal counsel
- Conflict of interest
- Adequate management of volunteers
- Management of fiscal resources
- Indirect cost allocations
- Cooperative agreements

Ombudsman Program in Florida

The State Long-term Care Ombudsman Program is codified in Part I of chapter 400, F.S. The Ombudsman was transferred from the Department of Health & Rehabilitative Services (now called the Department of Children & Family Services) to DOEA in 1991. The statute provides that the Ombudsman program "shall be located for administrative purposes in the Department of Elderly Affairs." Further, s. 400.0063(f), F.S., states that the program shall:

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

Based on the interim study prepared by the Committee on Elder Affairs & Long-Term Care, issues related to *access, visibility, conflict of interest, and indirect cost allocations* are challenging the ombudsman program.

C. EFFECT OF PROPOSED CHANGES:

The bill makes several technical changes to conform nomenclature. The bill provides for the appropriation of funds for training ombudsmen and a specific appropriation for materials for public awareness and education. The Ombudsman is directed to develop cooperative agreements with the state and local Human Rights Advocacy Committees and the Medicaid Fraud Division of the Attorney General's Office. Also, the bill places more responsibility and awareness of fiscal resources with the Ombudsman program by directing that the

Ombudsman prepare and submit an annual budget request. It removes the responsibility from DCFS to provide office space and administrative support.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. The long-term care ombudsman councils which operate in each of the Department of Elder Affairs' (DOEA) Planning & Service Areas (PSAs) are renamed from *district* councils to *local* councils.

Section 2. Makes a technical and conforming change.

Section 3. Makes a technical and conforming change.

Section 4. Specifies that the Ombudsman annually prepare a budget request that DOEA submits to the Governor for transmittal to the legislature. Provides that the Ombudsman is to enter into a cooperative agreement with the statewide and district human rights advocacy committees and with the Medicaid Fraud Division of the Attorney General's Office. Makes a technical conforming change.

Section 5. Provides that the Ombudsman perform the duties specified in state and federal law and shall be free of interference from DOEA, the Agency for Health Care Administration, and the Department of Children & Family Services. Specifies that DOEA is to provide administrative support to the Ombudsman and delineates that support. Provides that DOEA meet the costs associated with this support from funds appropriated to the department and that those costs be included in the annual Legislative budget requests.

Section 6. Provides that the Ombudsman, in consultation with the secretary of DOEA and the State Ombudsman Council, prepare the list of nominees from which the Governor selects persons for appointment to the State Long-Term Care Ombudsman Council. Provides that, if the Governor fails to make the appointments within 60 days after receiving the list of nominees, the Ombudsman will make the appointments. Provides that members of the state council can serve no more than two consecutive three-year terms. Adds a provision that allows the Ombudsman to determine if a member's absence from meetings is "without cause." Makes technical conforming changes.

Section 7. Provides that local ombudsman councils work under the direction of the Ombudsman and the state ombudsman council. In the case of vacancies and upon expiration of a term of appointment on local councils, the local council shall select a replacement and forward that selection to the Ombudsman. The Ombudsman shall review the selection and recommend approval or disapproval to the Governor for his appointment. If the Governor takes no action within 30 days, the replacement is considered disapproved and the process is repeated. Removes the requirement that DCFS provide office space and administrative support to the Ombudsman program. Makes technical and conforming changes.

Section 8. Makes technical and conforming changes.

Section 9. Makes technical and conforming changes.

Section 10. Makes technical and conforming changes.

Section 11. Transfers responsibility for administrative rules related to confidentiality from DOEA to the ombudsman.

Sections 12-30 Makes technical and conforming changes.

Section 31. Provides for an appropriation of \$40,000 from the General Revenue fund for training first-time appointees to the state and local long-term care ombudsman councils.

Section 32. Provides for an appropriation of \$40,000 to be used for materials to educate residents, their families and visitors, facility staff, and the general public about the ombudsman program and to encourage such persons to seek assistance from the ombudsman program.

Section 33. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

No impact.

2. Expenditures:

The bill provides for two appropriations of \$40,000 each for two specific projects.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

No impact is projected.

2. Expenditures:

No impact is projected.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

No impact is projected.

D. FISCAL COMMENTS:

The administrative support services charged to the Ombudsman program in Federal Grants Trust Funds by the department in 1999-2000 is \$404,660 out of a total allocation of \$945,993, or **42.8%**. The effect of the 10% limitation would give the Ombudsman a direct operational increase of \$310,060.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Responsibility and authority for rule-making related to confidentiality is transferred from DOEA to the Ombudsman.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 4, 2000, the Committee on Governmental Rules & Regulations adopted the following amendments and reported the bill favorably as a committee substitute:

Amendment 1 - Restored current statutory legislative intent language.

Amendment 2 - Raised appropriations for training materials from \$25,000 to \$40,000.

Amendment 3 - Specified that a cooperative agreement must be entered into with the Ombudsman and the "Medicaid Fraud Division."

On April 5, 2000, the Committee on Health & Human Services Appropriations adopted the following amendments and amendments to amendments and reported the bill favorably:

Amendment 1 - Added language making the appropriations non-recurring.

STORAGE NAME: h1539s1a.hhs

DATE: April 5, 2000

PAGE 7

Amendment 2 - Clarified the language which set the administrative charges up to 10 percent. The clarification designated the remaining 90 percent of allocated funding to be used for direct operations of the Ombudsman program.

Amendment to amendment 2 - A technical amendment which Inserted the words “or more” after “the remaining 90 percent”.

VII. SIGNATURES:

COMMITTEE ON Elder Affairs & Long Term Care:

Prepared by:

Staff Director:

Melanie Meyer

Tom Batchelor, Ph.D.

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

Prepared by:

Staff Director:

Shari Z. Whittier

David M. Greenbaum

AS FURTHER REVISED BY THE COMMITTEE ON HEALTH AND HUMAN SERVICES
APPROPRIATIONS:

Prepared by:

Staff Director:

Robert Wagner

Lynn Dixon