

1 400.628, F.S.; clarifying and conforming
2 references and cross references; providing
3 appropriations; providing an effective date.

4
5 Be It Enacted by the Legislature of the State of Florida:

6
7 Section 1. Subsection (4) of section 20.41, Florida
8 Statutes, is amended to read:

9 20.41 Department of Elderly Affairs.--There is created
10 a Department of Elderly Affairs.

11 (4) The department shall administratively house the
12 State Long-Term Care Ombudsman Council, created by s.
13 400.0067, and the local ~~district~~ long-term care ombudsman
14 councils, created by s. 400.0069 and shall, as required by s.
15 712 of the federal Older Americans Act of 1965, ensure that
16 both the state and local ~~district~~ long-term care ombudsman
17 councils operate in compliance with the Older Americans Act.
18 The councils in performance of their duties shall not be
19 subject to control, supervision, or direction by the
20 department.

21 Section 2. Paragraph (h) of subsection (4) of section
22 395.3025, Florida Statutes, is amended to read:

23 395.3025 Patient and personnel records; copies;
24 examination.--

25 (4) Patient records are confidential and must not be
26 disclosed without the consent of the person to whom they
27 pertain, but appropriate disclosure may be made without such
28 consent to:

29 (h) The State Long-Term Care Ombudsman Council and the
30 local ~~district~~ long-term care ombudsman councils, with respect
31 to the records of a patient who has been admitted from a

1 nursing home or long-term care facility, when the councils are
2 conducting an investigation involving the patient as
3 authorized under part II of chapter 400, upon presentation of
4 identification as a council member by the person making the
5 request. Disclosure under this paragraph shall only be made
6 after a competent patient or the patient's representative has
7 been advised that disclosure may be made and the patient has
8 not objected.

9 Section 3. Paragraph (b) of subsection (3) of section
10 400.0063, Florida Statutes, is amended to read:

11 400.0063 Establishment of Office of State Long-Term
12 Care Ombudsman; designation of ombudsman and legal advocate.--

13 (3)

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

16 1. Assisting the ombudsman in carrying out the duties
17 of the office with respect to the abuse, neglect, or violation
18 of rights of residents of long-term care facilities.

19 2. Assisting the state and local ~~district~~ ombudsman
20 councils in carrying out their responsibilities under this
21 part.

22 3. Initiating and prosecuting legal and equitable
23 actions to enforce the rights of long-term care facility
24 residents as defined in this chapter.

25 4. Serving as legal counsel to the state and local
26 ~~district~~ ombudsman councils, or individual members thereof,
27 against whom any suit or other legal action is initiated in
28 connection with the performance of the official duties of the
29 councils or an individual member.

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1 Section 4. Paragraph (f) of subsection (1) and
2 subsections (2) and (3) of section 400.0065, Florida Statutes,
3 are amended to read:

4 400.0065 State Long-Term Care Ombudsman; duties and
5 responsibilities; conflict of interest.--

6 (1) The purpose of the Office of State Long-Term Care
7 Ombudsman shall be to:

8 (f) Provide administrative and technical assistance to
9 state and local ~~district~~ ombudsman councils.

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

12 (a) Assist and support the efforts of the State
13 Long-Term Care Ombudsman Council in the establishment and
14 coordination of local ~~district~~ ombudsman councils throughout
15 the state.

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

18 (c) Within the limits of federal and state funding
19 authorized and appropriated, employ such personnel, including
20 staff for local ~~district~~ ombudsman councils, as are necessary
21 to perform adequately the functions of the office and provide
22 or contract for legal services to assist the state and local
23 ~~district~~ ombudsman councils in the performance of their
24 duties. Staff positions for each local ~~district~~ ombudsman
25 council may be established as career service positions, and
26 shall be filled by the ombudsman after ~~in~~ consultation with
27 the respective local ~~district~~ ombudsman council.

28 (d) Contract for services necessary to carry out the
29 activities of the office.

30 (e) Apply for, receive, and accept grants, gifts, or
31 other payments, including, but not limited to, real property,

1 personal property, and services from a governmental entity or
2 other public or private entity or person, and make
3 arrangements for the use of such grants, gifts, or payments.

4 (f) Annually prepare a budget request that shall be
5 submitted to the Governor by the department for transmittal to
6 the Legislature.

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

16 (g) Coordinate, to the greatest extent possible, state
17 and local district ombudsman services with the protection and
18 advocacy systems for individuals with developmental
19 disabilities and mental illnesses and with legal assistance
20 programs for the poor through adoption of memoranda of
21 understanding and other means.

22 (h) Enter into a cooperative agreement with the
23 statewide and district human rights advocacy committees for
24 the purpose of coordinating advocacy services provided to
25 residents of long-term care facilities.

26 (i) Enter into a cooperative agreement with the
27 Medicaid Fraud Division as prescribed under s. 731(e)(2)(B) of
28 the Older Americans Act.

29 (3) The State Long-Term Care Ombudsman shall not:

30 (a) Have a direct involvement in the licensing or
31 certification of, or an ownership or investment interest in, a

1 long-term care facility or a provider of a long-term care
2 service.

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

5 (c) Receive, or have a right to receive, directly or
6 indirectly, remuneration, in cash or in kind, under a
7 compensation agreement with the owner or operator of a
8 long-term care facility.

9
10 The Department of Elderly Affairs, in consultation with
11 ombudsman, shall adopt rules to establish procedures to
12 identify and eliminate conflicts of interest as described in
13 this subsection.

14 Section 5. Section 400.0066, Florida Statutes, is
15 created to read:

16 400.0066 Office of State Long-Term Care Ombudsman and
17 departments of state government.--

18 (1) The State Long-Term Care Ombudsman shall perform
19 the duties specified in state and federal law.

20 (2) Officials from the Department of Elderly Affairs,
21 the Agency for Health Care Administration, and the Department
22 of Children and Family Services shall not interfere in the
23 performance of official duties of any ombudsman staff or
24 volunteers.

25 (3) The Department of Elderly Affairs shall provide
26 administrative support to the long-term care ombudsman
27 program, including:

28 (a) Office space for state and local ombudsman
29 councils.

30 (b) Assistance with personnel, accounting, and
31 management information systems.

1 (4) The Department of Elderly Affairs shall meet the
2 costs associated with these functions from funds appropriated
3 to the department.

4 (5) The Department of Elderly Affairs shall include
5 the costs associated with support of the long-term care
6 ombudsman program in developing its budget requests for
7 consideration by the Governor and submittal to the
8 Legislature.

9 (6) The Department of Elderly Affairs may divert from
10 the federal ombudsman appropriation an amount equal to the
11 department's administrative cost ratio, not to exceed 10
12 percent of the federal appropriation, for the ombudsman.

13 Section 6. Section 400.0067, Florida Statutes, is
14 amended to read:

15 400.0067 Establishment of State Long-Term Care
16 Ombudsman Council; duties; membership.--

17 (1) There is created within the Office of State
18 Long-Term Care Ombudsman, the State Long-Term Care Ombudsman
19 Council.

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

21 (a) Assist the ombudsman in reaching a consensus among
22 local ~~district~~ ombudsman councils on issues of statewide
23 concern.

24 (b) Serve as an appellate body in receiving from the
25 local ~~district~~ ombudsman councils complaints not resolved at
26 the local ~~district~~ level. The state ombudsman council may
27 enter any long-term care facility involved in an appeal,
28 pursuant to the conditions specified in s. 400.0069(3).

29 (c) Assist the ombudsman to discover, investigate, and
30 determine the existence of abuse or neglect in any long-term
31 care facility and to develop procedures, in consultation with

1 the Department of Elderly Affairs, relating to such
2 investigations. Investigations may consist, in part, of one or
3 more onsite administrative inspections.

4 (d) Assist the ombudsman in eliciting, receiving,
5 responding to, and resolving complaints made by or on behalf
6 of long-term care facility residents and in developing
7 procedures, in consultation with the Department of Elderly
8 Affairs, relating to the receipt and resolution of such
9 complaints.

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

13 (f) Be authorized to call upon appropriate agencies of
14 state government for such professional assistance as may be
15 needed in the discharge of its duties, including assistance
16 from the adult protective services program of the Department
17 of Children and Family Services.

18 ~~(g) Enter into a cooperative agreement with the~~
19 ~~statewide and district human rights advocacy committees for~~
20 ~~the purpose of coordinating advocacy services provided to~~
21 ~~residents of long-term care facilities.~~

22 (g)(h) Prepare an annual report describing the
23 activities carried out by the ombudsman and the State
24 Long-Term Care Ombudsman Council in the year for which the
25 report is prepared. The State Long-Term Care Ombudsman
26 Council shall submit the report to the Commissioner of the
27 United States Administration on Aging, the Governor, the
28 President of the Senate, the Speaker of the House of
29 Representatives, the minority leaders of the House and Senate,
30 the chairpersons of appropriate House and Senate committees,
31 the Secretaries of Elderly Affairs and Children and Family

1 Services, and the Director of Health Care Administration. The
2 report shall be submitted at least 30 days before the
3 convening of the regular session of the Legislature and shall,
4 at a minimum:

5 1. Contain and analyze data collected concerning
6 complaints about and conditions in long-term care facilities.

7 2. Evaluate the problems experienced by residents of
8 long-term care facilities.

9 3. Contain recommendations for improving the quality
10 of life of the residents and for protecting the health,
11 safety, welfare, and rights of the residents.

12 4. Analyze the success of the ombudsman program during
13 the preceding year and identify the barriers that prevent the
14 optimal operation of the program. The report of the program's
15 successes shall also address the relationship between the
16 state long-term care ombudsman program, the Department of
17 Elderly Affairs, the Agency for Health Care Administration,
18 and the Department of Children and Family Services, and an
19 assessment of how successfully the state long-term care
20 ombudsman program has carried out its responsibilities under
21 the Older Americans Act.

22 5. Provide policy and regulatory and legislative
23 recommendations to solve identified problems; resolve
24 residents' complaints; improve the quality of care and life of
25 the residents; protect the health, safety, welfare, and rights
26 of the residents; and remove the barriers to the optimal
27 operation of the state long-term care ombudsman program.

28 6. Contain recommendations from the local ~~district~~
29 ombudsman councils regarding program functions and activities.

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1 7. Include a report on the activities of the legal
2 advocate and other legal advocates acting on behalf of the
3 local district and state councils.

4 (3)(a) The State Long-Term Care Ombudsman Council
5 shall be composed of: one active local council member
6 designated by each local council and three persons appointed
7 by the Governor.~~a number of members equal to the number of~~
8 ~~district councils in the state plus three. Each district~~
9 ~~ombudsman council, including the ombudsman councils for~~
10 ~~subdistricts 3A and 3B, shall appoint one member and the~~
11 ~~Governor shall appoint three members to the State Long-Term~~
12 ~~Care Ombudsman Council. An individual designated by a~~
13 ~~district ombudsman council must have been a member of a~~
14 ~~district ombudsman council for at least 1 year, and shall~~
15 ~~continue to serve as an active member at the district level.~~
16 ~~The Governor's appointments shall be made from a list of not~~
17 ~~fewer than eight nominees, to be selected by the secretary in~~
18 ~~consultation with the State Long-Term Care Ombudsman Council~~
19 ~~and submitted to the Governor. If the appointments are not~~
20 ~~made within 30 days after the Governor receives the list of~~
21 ~~nominees, the secretary shall, in consultation with the State~~
22 ~~Long-Term Care Ombudsman Council, appoint three members from~~
23 ~~the list of nominees submitted to the Governor. At least one~~
24 ~~member appointed by the Governor must be over 60 years of age.~~

25 **(b)1. The ombudsman, in consultation with the**
26 **secretary and the state ombudsman council, shall submit a list**
27 **of at least eight names to the Governor of persons not serving**
28 **on a local council.**

29 **2. The Governor shall appoint three members from the**
30 **list, at least one of whom must be over 60 years of age.**

31

1 3. If the Governor's appointments are not made within
2 60 days after the ombudsman submits the list, the ombudsman,
3 in consultation with the state ombudsman council, shall
4 appoint three members, at least one of whom must be over 60
5 years of age.

6 (c)(b) All members shall be appointed to serve 3-year
7 terms. A member of the state ombudsman council may not serve
8 more than two consecutive terms. Any vacancy shall be filled
9 in the same manner as the original appointment. The position
10 of any member missing three consecutive regular meetings
11 without cause shall be declared vacant. The findings of the
12 ombudsman regarding cause shall be final and binding.

13 (d)(e) The state ombudsman council shall elect a
14 chairperson for a term of 1 year from among the members who
15 have served for at least 1 year. The chairperson shall select
16 a vice chairperson from among the members. The vice
17 chairperson shall preside over the council in the absence of
18 the chairperson.

19 (e)(d) The state ombudsman council shall meet upon the
20 call of the chairperson, at least quarterly or more frequently
21 as needed.

22 (f)(e) Members shall receive no compensation but shall
23 be reimbursed for per diem and travel expenses as provided in
24 s. 112.061.

25 ~~(4) Members shall be appointed and serve 3-year terms~~
26 ~~as provided by this section.~~

27 (4)(5) No officer, employee, or representative of the
28 Office of State Long-Term Care Ombudsman or of the State
29 Long-Term Care Ombudsman Council, nor any member of the
30 immediate family of such officer, employee, or representative,
31 may have a conflict of interest. ~~The Department of Elderly~~

1 ~~Affairs, in consultation with~~ The ombudsman, shall adopt rules
2 to identify and remove conflicts of interest.

3 (5)~~(6)~~ The Department of Elderly Affairs shall make a
4 separate and distinct request for an appropriation for all
5 expenses for the state and local ~~district~~ ombudsman councils.

6 Section 7. Section 400.0069, Florida Statutes, is
7 amended to read:

8 400.0069 Local ~~District~~ long-term care ombudsman
9 councils; duties; membership.--

10 (1) There shall be at least one long-term care
11 ombudsman council in each of the planning and service areas of
12 the Department of Elderly Affairs, which shall function under
13 the direction of the ombudsman and the state ombudsman
14 council.

15 (2) The duties of the local ~~district~~ ombudsman council
16 are:

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

20 (b) To discover, investigate, and determine the
21 existence of abuse or neglect in any long-term care facility
22 and to use the procedures provided for in ss. 415.101-415.113
23 when applicable. Investigations may consist, in part, of one
24 or more onsite administrative inspections.

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

28 (d) To review and, if necessary, to comment on, for
29 their effect on the rights of long-term care facility
30 residents, all existing or proposed rules, regulations, and
31

1 other governmental policies relating to long-term care
2 facilities.

3 (e) To review personal property and money accounts of
4 Medicaid residents pursuant to an investigation to obtain
5 information regarding a specific complaint or problem.

6 (f) To represent the interests of residents before
7 government agencies and to seek administrative, legal, and
8 other remedies to protect the health, safety, welfare, and
9 rights of the residents.

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

12 (3) In order to carry out the duties specified in
13 subsection (2), the local ~~district~~ ombudsman council is
14 authorized, pursuant to ss. 400.19(1) and 400.434, to enter
15 any long-term care facility without notice or first obtaining
16 a warrant, subject to the provisions of s. 400.0073(5).

17 (4) Each local ~~district~~ ombudsman council shall be
18 composed of no less than 15 members and no more than 30
19 members from the local planning and service area ~~district~~, to
20 include the following: one medical or osteopathic physician
21 whose practice includes or has included a substantial number
22 of geriatric patients and who may have limited practice in a
23 long-term care facility; one registered nurse who has
24 geriatric experience, if possible; one licensed pharmacist;
25 one registered dietitian; at least six nursing home residents
26 or representative consumer advocates for nursing home
27 residents; at least three residents of assisted living
28 facilities or adult family-care homes or three representative
29 consumer advocates for long-term care facility residents; one
30 attorney; and one professional social worker. In no case
31 shall the medical director of a long-term care facility or an

1 employee of the Agency for Health Care Administration, the
2 Department of Children and Family Services, or the Department
3 of Elderly Affairs serve as a member or as an ex officio
4 member of a council. Each member of the council shall certify
5 that neither the council member nor any member of the council
6 member's immediate family has any conflict of interest
7 pursuant to subsection (10). Local ~~District~~ ombudsman
8 councils are encouraged to recruit council members who are 60
9 years of age or older.

10 (5) All members shall be appointed to serve 3-year
11 terms. Upon expiration of a term and in case of any other
12 vacancy, the council shall select ~~appoint~~ a replacement by
13 majority vote ~~of the council, subject to the approval of the~~
14 ~~Governor.~~ The ombudsman shall review the selection of the
15 council and recommend approval or disapproval to the Governor.
16 If no action is taken by the Governor to approve or disapprove
17 the replacement of a member within 30 days after the ombudsman
18 ~~council~~ has notified the Governor of his or her
19 recommendation, ~~the appointment, the appointment of the~~
20 replacement shall be considered disapproved and the process
21 for selection of a replacement shall be repeated ~~approved.~~ ~~The~~
22 ~~term of any member missing three consecutive regular meetings~~
23 ~~without cause shall be declared vacant.~~

24 (6) The local ~~district~~ ombudsman council shall elect a
25 chair for a term of 1 year from members who have served at
26 least 1 year. The chair shall select a vice chair from among
27 the members of the council. The vice chair shall preside over
28 the council in the absence of the chair.

29 (7) The local ~~district~~ ombudsman council shall meet
30 upon the call of the chair or the ombudsman, at least once a
31

1 month or more frequently as needed to handle emergency
2 situations.

3 (8) A member of a local ~~district~~ ombudsman council
4 shall receive no compensation but shall be reimbursed for
5 travel expenses both within and outside the county of
6 residence in accordance with the provisions of s. 112.061.

7 (9) The local ~~district~~ ombudsman councils are
8 authorized to call upon appropriate agencies of state
9 government for such professional assistance as may be needed
10 in the discharge of their duties. All state agencies shall
11 cooperate with the local ~~district~~ ombudsman councils in
12 providing requested information and agency representatives at
13 council meetings. ~~The Department of Children and Family~~
14 ~~Services shall continue to provide space and in-kind~~
15 ~~administrative support for each district ombudsman council~~
16 ~~staff within available resources until the Legislature~~
17 ~~appropriates funds for office space and administrative~~
18 ~~support.~~

19 (10) No officer, employee, or representative of a
20 local ~~district~~ long-term care ombudsman council, nor any
21 member of the immediate family of such officer, employee, or
22 representative, may have a conflict of interest. ~~The~~
23 ~~Department of Elderly Affairs, in consultation with The~~
24 ~~ombudsman, shall adopt rules to identify and remove conflicts~~
25 ~~of interest.~~

26 Section 8. Section 400.0071, Florida Statutes, is
27 amended to read:

28 400.0071 Complaint procedures.--

29 (1) The state ombudsman council shall establish state
30 and local ~~district~~ procedures for receiving complaints against
31 a nursing home or long-term care facility or its employee.

1 (2) These procedures shall be posted in full view in
2 every nursing home or long-term care facility. Every resident
3 or representative of a resident shall receive, upon admission
4 to a nursing home or long-term care facility, a printed copy
5 of the procedures of the state and the local ~~district~~
6 ombudsman councils.

7 Section 9. Subsections (1), (2), (3), and (4) of
8 section 400.0073, Florida Statutes, are amended to read:

9 400.0073 State and local ~~district~~ ombudsman council
10 investigations.--

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

15 (a) Contrary to law.

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

18 (c) Based on a mistake of fact.

19 (d) Based on improper or irrelevant grounds.

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

21 (f) Performed in an inefficient manner.

22 (g) Otherwise erroneous.

23 (2) In an investigation, both the state and local
24 ~~district~~ ombudsman councils have the authority to hold
25 hearings.

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

29 (4) In addition to any specific investigation made
30 pursuant to a complaint, the local ~~district~~ ombudsman council
31 shall conduct, at least annually, an investigation, which

1 shall consist, in part, of an onsite administrative
2 inspection, of each nursing home or long-term care facility
3 within its jurisdiction.

4 Section 10. Section 400.0075, Florida Statutes, is
5 amended to read:

6 400.0075 Complaint resolution procedures.--

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

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

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

24 (c) Refer the complaint to the state ombudsman
25 council.

26

27 If the health, safety, welfare, or rights of the resident are
28 in imminent danger, the local ~~district~~ long-term care
29 ombudsman council may seek immediate legal or administrative
30 remedies to protect the resident.

31

- 1 (2) Upon referral from the local ~~district~~ ombudsman
2 council, the state ombudsman council shall assume the
3 responsibility for the disposition of the complaint. If a
4 long-term care facility fails to take action on a complaint
5 found valid by the state ombudsman council, the state council
6 may:
- 7 (a) In accordance with s. 400.0077, publicize the
8 complaint, the recommendations of the council, and the
9 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 Agency for Health Care
17 Administration changes in rules for licensing and regulating
18 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) Recommend to the Agency for Health Care
23 Administration that the long-term care facility no longer
24 receive payments under the State Medical Assistance Program
25 (Medicaid).
- 26 (f) Recommend that the agency initiate procedures for
27 revocation of license in accordance with chapter 120.
- 28 (g) Seek legal, administrative, or other remedies to
29 protect the health, safety, welfare, or rights of the
30 resident.
31

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

5 (3) The state ombudsman council shall provide, as part
6 of its annual report required pursuant to s.
7 400.0067(2)(g)(h), information relating to the disposition of
8 all complaints to the Department of Elderly Affairs.

9 Section 11. Paragraph (a) of subsection (1) and
10 subsections (4) and (5) of section 400.0077, Florida Statutes,
11 are amended to read:

12 400.0077 Confidentiality.--

13 (1) The following are confidential and exempt from the
14 provisions of s. 119.07(1):

15 (a) Resident records held by the ombudsman or by the
16 state or a local ~~district~~ ombudsman council.

17 (4) Members of any state or local ~~district~~ ombudsman
18 council shall not be required to testify in any court with
19 respect to matters held to be confidential under s. 400.414
20 except as may be necessary to enforce the provisions of this
21 act.

22 (5) Subject to the provisions of this section, the
23 Office of State Long-Term Care Ombudsman ~~Department of Elderly~~
24 ~~Affairs, in consultation with the ombudsman and the State~~
25 ~~Long-Term Care Ombudsman Council,~~ shall adopt rules for the
26 disclosure by the ombudsman or local ~~district~~ ombudsman
27 councils of files maintained by the program.

28 Section 12. Subsection (2) of section 400.0079,
29 Florida Statutes, is amended to read:

30 400.0079 Immunity.--

31

1 (2) The ombudsman or any person acting on behalf of
2 the Office of State Long-Term Care Ombudsman or the state or a
3 local ~~district~~ long-term care ombudsman council shall be
4 immune from any liability, civil or criminal, that otherwise
5 might be incurred or imposed, during the good faith
6 performance of official duties.

7 Section 13. Subsections (1) and (2) of section
8 400.0081, Florida Statutes, are amended to read:

9 400.0081 Access.--

10 (1) The Office of State Long-Term Care Ombudsman, the
11 State Long-Term Care Ombudsman Council, and the local ~~district~~
12 long-term care ombudsman councils, or their representatives,
13 shall have access to:

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

15 (b) Medical and social records of a resident for
16 review, if:

17 1. The office has the permission of the resident or
18 the legal representative of the resident; or

19 2. The resident is unable to consent to the review and
20 has no legal representative.

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

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

25 2. The office has reasonable cause to believe that the
26 guardian is not acting in the best interests of the resident.

27 3. The representative obtains the approval of the
28 ombudsman.

29 (d) The administrative records, policies, and
30 documents to which the residents, or the general public, have
31 access.

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

4 (2) Notwithstanding paragraph (1)(b), if, pursuant to
5 a complaint investigation by the state ombudsman council or a
6 local district ombudsman council, the legal representative of
7 the resident refuses to give permission for the release of the
8 resident's records, and if the Office of ~~the~~ State Long-Term
9 Care Ombudsman ~~Council~~ has reasonable cause to find that the
10 legal representative is not acting in the best interests of
11 the resident, the medical and social records of the resident
12 must be made available to the state or local district council
13 as is necessary for the members of the council to investigate
14 the complaint.

15 Section 14. Subsections (1) and (2) of section
16 400.0083, Florida Statutes, are amended to read:

17 400.0083 Interference; retaliation; penalties.--

18 (1) It shall be unlawful for any person, long-term
19 care facility, or other entity to willfully interfere with a
20 representative of the Office of ~~the~~ State Long-Term Care
21 Ombudsman, the State Long-Term Care Ombudsman Council, or a
22 local district long-term care ombudsman council in the
23 performance of official duties.

24 (2) It shall be unlawful for any person, long-term
25 care facility, or other entity to retaliate against any
26 resident, employee, or other person for filing a complaint
27 with, providing information to, or otherwise cooperating with
28 any representative of the Office of ~~the~~ State Long-Term Care
29 Ombudsman, the State Long-Term Care Ombudsman Council, or a
30 local district long-term care ombudsman council.

31

1 Section 15. Section 400.0087, Florida Statutes, is
2 amended to read:

3 400.0087 Agency oversight.--

4 (1) The Department of Elderly Affairs shall monitor
5 the local ~~district~~ ombudsman councils responsible for carrying
6 out the duties delegated by s. 400.0069 and federal law. The
7 department, in consultation with the ombudsman and the State
8 Long-Term Care Ombudsman Council, shall adopt rules to
9 establish the policies and procedures for the monitoring of
10 local ~~district~~ ombudsman councils.

11 (2) The department is responsible for ensuring that
12 the Office of State Long-Term Care Ombudsman prepares its
13 annual report; provides information to public and private
14 agencies, legislators, and others; provides appropriate
15 training to representatives of the office or of the state or
16 local ~~district~~ long-term care ombudsman councils; and
17 coordinates ombudsman services with the Advocacy Center for
18 Persons with Disabilities and with providers of legal services
19 to residents of long-term care facilities in compliance with
20 state and federal laws.

21 (3) The Department of Elderly Affairs is the
22 designated state unit on aging for purposes of complying with
23 the federal Older Americans Act. The Department of Elderly
24 Affairs shall ensure that the ombudsman program has the
25 objectivity and independence required to qualify it for
26 funding under the federal Older Americans Act, and shall carry
27 out the long-term care ombudsman program through the Office of
28 ~~the~~ State Long-Term Care Ombudsman ~~Council~~. The Department of
29 Elderly Affairs shall also:

30
31

1 (a) Receive and disburse state and federal funds for
2 purposes that the state ombudsman council has formulated in
3 accordance with the Older Americans Act.

4 (b) Act as liaison between the federal program
5 representatives, the staffs of the state and local ~~district~~
6 ombudsman councils, and members of the state and local
7 ~~district~~ ombudsman councils.

8 Section 16. Section 400.0089, Florida Statutes, is
9 amended to read:

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

25 Section 17. Section 400.0091, Florida Statutes, is
26 amended to read:

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

1 program no later than June 1, 1994. No employee, officer, or
2 representative of the office or of the state or local ~~district~~
3 long-term care ombudsman councils, other than the ombudsman,
4 may carry out any authorized ombudsman duty or responsibility
5 unless the person has received the training required by this
6 section and has been approved by the ombudsman as qualified to
7 carry out ombudsman activities on behalf of the office or the
8 state or local ~~district~~ long-term care ombudsman councils.

9 Section 18. Present subsections (8), (9), and (10) of
10 section 400.021, Florida Statutes, are renumbered as
11 subsections (7), (8), and (9), respectively, and present
12 subsection (7) is renumbered as subsection (10) and amended to
13 read:

14 400.021 Definitions.--When used in this part, unless
15 the context otherwise requires, the term:

16 ~~(10)(7)~~ "Local ~~District~~ ombudsman council" means a
17 local ~~district~~ long-term care ombudsman council established
18 pursuant to s. 400.0069, located within the Older Americans
19 Act planning and service areas.

20 Section 19. Paragraph (c) of subsection (1) and
21 subsections (2) and (3) of section 400.022, Florida Statutes,
22 are amended to read:

23 400.022 Residents' rights.--

24 (1) All licensees of nursing home facilities shall
25 adopt and make public a statement of the rights and
26 responsibilities of the residents of such facilities and shall
27 treat such residents in accordance with the provisions of that
28 statement. The statement shall assure each resident the
29 following:

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

1 to have reasonable access to the resident. The resident has
2 the right to deny or withdraw consent to access at any time by
3 any entity or individual. Notwithstanding the visiting policy
4 of the facility, the following individuals must be permitted
5 immediate access to the resident:

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

14 2. Subject to the resident's right to deny or withdraw
15 consent, immediate family or other relatives of the resident.
16

17 The facility must allow representatives of the State Long-Term
18 Care Ombudsman Council to examine a resident's clinical
19 records with the permission of the resident or the resident's
20 legal representative and consistent with state law.

21 (2) The licensee for each nursing home shall orally
22 inform the resident of the resident's rights and provide a
23 copy of the statement required by subsection (1) to each
24 resident or the resident's legal representative at or before
25 the resident's admission to a facility. The licensee shall
26 provide a copy of the resident's rights to each staff member
27 of the facility. Each such licensee shall prepare a written
28 plan and provide appropriate staff training to implement the
29 provisions of this section. The written statement of rights
30 must include a statement that a resident may file a complaint
31 with the agency or local ~~district~~ ombudsman council. The

1 statement must be in boldfaced type and shall include the
2 name, address, and telephone numbers of the local district
3 ombudsman council and adult abuse registry where complaints
4 may be lodged.

5 (3) Any violation of the resident's rights set forth
6 in this section shall constitute grounds for action by the
7 agency under the provisions of s. 400.102. In order to
8 determine whether the licensee is adequately protecting
9 residents' rights, the annual inspection of the facility shall
10 include private informal conversations with a sample of
11 residents to discuss residents' experiences within the
12 facility with respect to rights specified in this section and
13 general compliance with standards, and consultation with the
14 ombudsman council in the local district in which the nursing
15 home is located.

16 Section 20. Subsections (8), (9), (11), (12), (13),
17 and (14) of section 400.0255, Florida Statutes, are amended to
18 read:

19 400.0255 Resident transfer or discharge; requirements
20 and procedures; hearings.--

21 (8) The notice required by subsection (7) must be in
22 writing and must contain all information required by state and
23 federal law, rules, or regulations applicable to Medicaid or
24 Medicare cases. The agency shall develop a standard document
25 to be used by all facilities licensed under this part for
26 purposes of notifying residents of a discharge or transfer.
27 Such document must include a means for a resident to request
28 the local district long-term care ombudsman council to review
29 the notice and request information about or assistance with
30 initiating a fair hearing with the department's Office of
31 Appeals Hearings. In addition to any other pertinent

1 information included, the form shall specify the reason
2 allowed under federal or state law that the resident is being
3 discharged or transferred, with an explanation to support this
4 action. Further, the form shall state the effective date of
5 the discharge or transfer and the location to which the
6 resident is being discharged or transferred. The form shall
7 clearly describe the resident's appeal rights and the
8 procedures for filing an appeal, including the right to
9 request the local ~~district~~ ombudsman council to review the
10 notice of discharge or transfer. A copy of the notice must be
11 placed in the resident's clinical record, and a copy must be
12 transmitted to the resident's legal guardian or representative
13 and to the local ~~district~~ ombudsman council.

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

26 (11) Notwithstanding paragraph (10)(b), an emergency
27 discharge or transfer may be implemented as necessary pursuant
28 to state or federal law during the period of time after the
29 notice is given and before the time a hearing decision is
30 rendered. Notice of an emergency discharge or transfer to the
31 resident, the resident's legal guardian or representative, and

1 the local ~~district~~ ombudsman council if requested pursuant to
2 subsection (9) must be by telephone or in person. This notice
3 shall be given before the transfer, if possible, or as soon
4 thereafter as practicable. A local ~~district~~ ombudsman council
5 conducting a review under this subsection shall do so within
6 24 hours after receipt of the request. The resident's file
7 must be documented to show who was contacted, whether the
8 contact was by telephone or in person, and the date and time
9 of the contact. If the notice is not given in writing, written
10 notice meeting the requirements of subsection (8) must be
11 given the next working day.

12 (12) After receipt of any notice required under this
13 section, the local ~~district~~ ombudsman council may request a
14 private informal conversation with a resident to whom the
15 notice is directed, and, if known, a family member or the
16 resident's legal guardian or designee, to ensure that the
17 facility is proceeding with the discharge or transfer in
18 accordance with the requirements of this section. If
19 requested, the local ~~district~~ ombudsman council shall assist
20 the resident with filing an appeal of the proposed discharge
21 or transfer.

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

24 (a) The resident, or the resident's legal
25 representative or designee.

26 (b) The facility administrator, or the facility's
27 legal representative or designee.

28
29 A representative of the local ~~district~~ long-term care
30 ombudsman council may be present at all hearings authorized by
31 this section.

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

4 (a) Names and addresses.

5 (b) Medical services provided.

6 (c) Social and economic conditions or circumstances.

7 (d) Evaluation of personal information.

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

10 (f) Any information received verifying income
11 eligibility and amount of medical assistance payments. Income
12 information received from the Social Security Administration
13 or the Internal Revenue Service must be safeguarded according
14 to the requirements of the agency that furnished the data.

15

16 The exemption created by this subsection does not prohibit
17 access to such information by a local ~~district~~ long-term care
18 ombudsman council upon request, by a reviewing court if such
19 information is required to be part of the record upon
20 subsequent review, or as specified in s. 24(a), Art. I of the
21 State Constitution.

22 Section 21. Subsection (1) of section 400.19, Florida
23 Statutes, is amended to read:

24 400.19 Right of entry and inspection.--

25 (1) The agency and any duly designated officer or
26 employee thereof or a member of the State Long-Term Care
27 Ombudsman Council or the local ~~district~~ long-term care
28 ombudsman council shall have the right to enter upon and into
29 the premises of any facility licensed pursuant to this part,
30 or any distinct nursing home unit of a hospital licensed under
31 chapter 395 or any freestanding facility licensed under

1 chapter 395 that provides extended care or other long-term
2 care services, at any reasonable time in order to determine
3 the state of compliance with the provisions of this part and
4 rules in force pursuant thereto. The right of entry and
5 inspection shall also extend to any premises which the agency
6 has reason to believe is being operated or maintained as a
7 facility without a license, but no such entry or inspection of
8 any premises shall be made without the permission of the owner
9 or person in charge thereof, unless a warrant is first
10 obtained from the circuit court authorizing same. Any
11 application for a facility license or renewal thereof, made
12 pursuant to this part, shall constitute permission for and
13 complete acquiescence in any entry or inspection of the
14 premises for which the license is sought, in order to
15 facilitate verification of the information submitted on or in
16 connection with the application; to discover, investigate, and
17 determine the existence of abuse or neglect; or to elicit,
18 receive, respond to, and resolve complaints. The agency shall,
19 within 60 days after receipt of a complaint made by a resident
20 or resident's representative, complete its investigation and
21 provide to the complainant its findings and resolution.

22 Section 22. Subsection (1) of section 400.191, Florida
23 Statutes, is amended to read:

24 400.191 Availability, distribution, and posting of
25 reports and records.--

26 (1) The agency shall provide information to the public
27 about all of the licensed nursing home facilities operating in
28 the state. The agency shall, within 60 days after an annual
29 inspection visit or within 30 days after any interim visit to
30 a facility, send copies of the inspection reports to the local
31 ~~district~~ long-term care ombudsman council, the agency's local

1 office, and a public library or the county seat for the county
2 in which the facility is located.

3 Section 23. Subsection (6) and paragraph (c) of
4 subsection (7) of section 400.23, Florida Statutes, are
5 amended to read:

6 400.23 Rules; evaluation and deficiencies; licensure
7 status.--

8 (6) Prior to conducting a survey of the facility, the
9 survey team shall obtain a copy of the local ~~district~~
10 long-term care ombudsman council report on the facility.
11 Problems noted in the report shall be incorporated into and
12 followed up through the agency's inspection process. This
13 procedure does not preclude the local ~~district nursing home~~
14 ~~and~~ long-term care ~~facility~~ ombudsman council from requesting
15 the agency to conduct a followup visit to the facility.

16 (7) The agency shall, at least every 15 months,
17 evaluate all nursing home facilities and make a determination
18 as to the degree of compliance by each licensee with the
19 established rules adopted under this part as a basis for
20 assigning a licensure status to that facility. The agency
21 shall base its evaluation on the most recent inspection
22 report, taking into consideration findings from other official
23 reports, surveys, interviews, investigations, and inspections.
24 The agency shall assign a licensure status of standard or
25 conditional to each nursing home.

26 (c) In evaluating the overall quality of care and
27 services and determining whether the facility will receive a
28 conditional or standard license, the agency shall consider the
29 needs and limitations of residents in the facility and the
30 results of interviews and surveys of a representative sampling
31 of residents, families of residents, ombudsman council members

1 in the planning and service area ~~district~~ in which the
2 facility is located, guardians of residents, and staff of the
3 nursing home facility.

4 Section 24. Subsection (13) of section 400.419,
5 Florida Statutes, is amended to read:

6 400.419 Violations; administrative fines.--

7 (13) The agency shall develop and disseminate an
8 annual list of all facilities sanctioned or fined \$5,000 or
9 more for violations of state standards, the number and class
10 of violations involved, the penalties imposed, and the current
11 status of cases. The list shall be disseminated, at no charge,
12 to the Department of Elderly Affairs, the Department of
13 Health, the Department of Children and Family Services, the
14 area agencies on aging, the Statewide Human Rights Advocacy
15 Committee, and the state and local ~~district nursing home~~
16 ombudsman councils. The Department of Children and Family
17 Services shall disseminate the list to service providers under
18 contract to the department who are responsible for referring
19 persons to a facility for residency. The agency may charge a
20 fee commensurate with the cost of printing and postage to
21 other interested parties requesting a copy of this list.

22 Section 25. Subsection (2) of section 400.428, Florida
23 Statutes, is amended to read:

24 400.428 Resident bill of rights.--

25 (2) The administrator of a facility shall ensure that
26 a written notice of the rights, obligations, and prohibitions
27 set forth in this part is posted in a prominent place in each
28 facility and read or explained to residents who cannot read.
29 This notice shall include the name, address, and telephone
30 numbers of the local ~~district~~ ombudsman council and adult
31 abuse registry and, when applicable, the Advocacy Center for

1 Persons with Disabilities, Inc., and the district human rights
2 advocacy committee, where complaints may be lodged. The
3 facility must ensure a resident's access to a telephone to
4 call the local ~~district~~ ombudsman council, adult abuse
5 registry, Advocacy Center for Persons with Disabilities, Inc.,
6 and district human rights advocacy committee.

7 Section 26. Section 400.434, Florida Statutes, is
8 amended to read:

9 400.434 Right of entry and inspection.--Any duly
10 designated officer or employee of the department, the
11 Department of Children and Family Services, the agency, the
12 state or local fire marshal, or a member of the state or local
13 ~~district~~ long-term care ombudsman council shall have the right
14 to enter unannounced upon and into the premises of any
15 facility licensed pursuant to this part in order to determine
16 the state of compliance with the provisions of this part and
17 of rules or standards in force pursuant thereto. The right of
18 entry and inspection shall also extend to any premises which
19 the agency has reason to believe is being operated or
20 maintained as a facility without a license; but no such entry
21 or inspection of any premises may be made without the
22 permission of the owner or person in charge thereof, unless a
23 warrant is first obtained from the circuit court authorizing
24 such entry. The warrant requirement shall extend only to a
25 facility which the agency has reason to believe is being
26 operated or maintained as a facility without a license. Any
27 application for a license or renewal thereof made pursuant to
28 this part shall constitute permission for, and complete
29 acquiescence in, any entry or inspection of the premises for
30 which the license is sought, in order to facilitate
31 verification of the information submitted on or in connection

1 with the application; to discover, investigate, and determine
2 the existence of abuse or neglect; or to elicit, receive,
3 respond to, and resolve complaints. Any current valid license
4 shall constitute unconditional permission for, and complete
5 acquiescence in, any entry or inspection of the premises by
6 authorized personnel. The agency shall retain the right of
7 entry and inspection of facilities that have had a license
8 revoked or suspended within the previous 24 months, to ensure
9 that the facility is not operating unlawfully. However, before
10 entering the facility, a statement of probable cause must be
11 filed with the director of the agency, who must approve or
12 disapprove the action within 48 hours. Probable cause shall
13 include, but is not limited to, evidence that the facility
14 holds itself out to the public as a provider of personal care
15 services or the receipt of a complaint by the long-term care
16 ombudsman council about the facility.

17 Section 27. Subsection (2) of section 400.435, Florida
18 Statutes, is amended to read:

19 400.435 Maintenance of records; reports.--

20 (2) Within 60 days after the date of the biennial
21 inspection visit or within 30 days after the date of any
22 interim visit, the agency shall forward the results of the
23 inspection to the local ~~district~~ ombudsman council in whose
24 planning and service area, as defined in part II, the facility
25 is located; to at least one public library or, in the absence
26 of a public library, the county seat in the county in which
27 the inspected assisted living facility is located; and, when
28 appropriate, to the district adult services and district
29 alcohol, drug abuse, and mental health program offices.

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1 Section 28. Paragraph (i) of subsection (1) and
2 subsection (5) of section 400.4415, Florida Statutes, are
3 amended to read:

4 400.4415 Assisted living facilities advisory
5 committee.--

6 (1) There is created the assisted living facilities
7 advisory committee, which shall assist the agency in
8 developing and implementing a pilot rating system for
9 facilities. The committee shall consist of nine members who
10 are to be appointed by, and report directly to, the director
11 of the agency. The membership is to include:

12 (i) One consumer representative from a local ~~district~~
13 long-term care ombudsman council.

14 (5) In determining the rating and evaluating the
15 overall quality of care and services, the agency shall
16 consider the needs and limitations of residents in the
17 facility and the results of interviews and surveys of a
18 representative sampling of residents, families of residents,
19 long-term care ombudsman council members in the planning and
20 service area ~~district~~ in which the facility is located,
21 guardians of residents, and staff of the facility.

22 Section 29. Subsection (7) of section 400.619, Florida
23 Statutes, is amended to read:

24 400.619 Licensure application and renewal.--

25 (7) Access to a licensed adult family-care home must
26 be provided at reasonable times for the appropriate officials
27 of the department, the Department of Health, the Department of
28 Children and Family Services, the agency, and the State Fire
29 Marshal, who are responsible for the development and
30 maintenance of fire, health, sanitary, and safety standards,
31 to inspect the facility to assure compliance with these

1 standards. In addition, access to a licensed adult
2 family-care home must be provided at reasonable times for the
3 local ~~district~~ long-term care ombudsman council.

4 Section 30. Subsection (2) of section 400.62, Florida
5 Statutes, is amended to read:

6 400.628 Residents' bill of rights.--

7 (2) The provider shall ensure that residents and their
8 legal representatives are made aware of the rights,
9 obligations, and prohibitions set forth in this part.

10 Residents must also be given the names, addresses, and
11 telephone numbers of the local ~~district~~ ombudsman council and
12 the adult abuse registry where they may lodge complaints.

13 Section 31. There is hereby appropriated from the
14 General Revenue Fund to the long-term care ombudsman program
15 within the Department of Elderly Affairs the sum of \$40,000 to
16 be used for training members of the state and local long-term
17 care ombudsman councils.

18 Section 32. There is hereby appropriated from the
19 General Revenue Fund to the long-term care ombudsman program
20 within the Department of Elderly Affairs the sum of \$40,000 to
21 be used for materials to educate residents of long-term care
22 facilities and their families and visitors, facility staff,
23 and the general public about the ombudsman program and to
24 encourage such persons to seek assistance from the long-term
25 care ombudsman program.

26 Section 33. This act shall take effect July 1, 2000.

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