

1                                   A bill to be entitled  
2           An act relating to health care; providing an  
3           appropriation for continued review of clinical  
4           laboratory services for kidney dialysis  
5           patients and requiring a report thereon;  
6           amending s. 20.43, F.S.; requiring the  
7           department to include certain assessments,  
8           projections, and recommendations in the  
9           department's strategic plan rather than in the  
10          state health plan; authorizing the department  
11          to hold copyrights, trademarks, and service  
12          marks and to enforce its rights to them;  
13          amending s. 39.303, F.S.; providing duties of  
14          the Children's Medical Services Program within  
15          the department with respect to child protection  
16          teams; amending s. 120.80, F.S.; revising  
17          procedures for hearings conducted with respect  
18          to the Brain and Spinal Cord Injury Program;  
19          amending s. 154.011, F.S.; revising duties of  
20          the department with respect to monitoring and  
21          administering certain primary care programs;  
22          amending s. 215.5602, F.S.; revising the goals  
23          of and expenditures for the Florida Biomedical  
24          Research Program within the Lawton Chiles  
25          Endowment Fund; amending s. 381.0011, F.S.;  
26          providing requirements for the department's  
27          strategic plan; amending s. 381.003, F.S.;  
28          requiring the department to develop an  
29          immunization registry; requiring that the  
30          registry include all children born in this  
31          state; providing procedures under which a

1 parent or guardian may elect not to participate  
2 in the immunization registry; providing for the  
3 electronic transfer of records between health  
4 care professionals and other agencies;  
5 authorizing the department to adopt rules for  
6 administering the registry; amending s.  
7 381.0031, F.S.; authorizing the department to  
8 obtain and inspect copies of certain medical  
9 records and information, notwithstanding laws  
10 governing the confidentiality of patient  
11 records; exempting health care practitioners,  
12 health care facilities, and agents and  
13 employees thereof from liability for the  
14 authorized release of patient records; amending  
15 s. 381.004, F.S.; revising requirements for the  
16 release of certain preliminary test results for  
17 human immunodeficiency virus; revising the  
18 definition of the term "medical personnel" to  
19 include additional personnel; amending s.  
20 381.0059, F.S.; defining the term "person who  
21 provides services under a school health  
22 services plan" for purposes of background  
23 screening requirements for school health  
24 services personnel; amending s. 381.0101, F.S.;  
25 revising certification requirements for certain  
26 environmental health professionals; amending s.  
27 381.731, F.S.; requiring that the department  
28 include certain strategies in the department's  
29 strategic plan rather than in the Healthy  
30 Communities, Healthy People Plan; amending s.  
31 381.734, F.S.; revising the requirements of the

1 Healthy Communities, Healthy People Program;  
2 transferring, renumbering, and amending s.  
3 413.46, F.S.; revising legislative intent with  
4 respect to the brain and spinal cord injury  
5 program; creating s. 381.745, F.S.; providing  
6 definitions for purposes of the Charlie Mack  
7 Overstreet Brain or Spinal Cord Injuries Act;  
8 amending s. 381.75, F.S., relating to duties of  
9 the department under the brain and spinal cord  
10 injury program; conforming provisions to  
11 changes made by the act; creating s. 381.755,  
12 F.S.; providing that the right to benefits  
13 under the program is not assignable; amending  
14 s. 381.76, F.S.; revising eligibility  
15 requirements for the brain and spinal cord  
16 injury program; creating s. 381.765, F.S.;  
17 authorizing the department to retain title to  
18 property and equipment and to dispose of  
19 surplus equipment; authorizing the department  
20 to adopt rules; creating s. 381.775, F.S.;  
21 continuing the confidentiality provided for  
22 records and information that pertains to  
23 applicants for and recipients of services under  
24 the brain and spinal cord injury program;  
25 specifying circumstances under which the  
26 department may release such records or  
27 information; amending s. 381.78, F.S., relating  
28 to the advisory council on brain and spinal  
29 cord injuries; authorizing reimbursement for  
30 per diem and travel expenses for members of the  
31 council; prohibiting a council member from

1 voting on matters that provide a financial  
2 benefit or create a conflict of interest;  
3 providing for removal of members for cause;  
4 creating s. 381.785, F.S.; authorizing the  
5 department to recover third-party payments for  
6 funded services; providing for the enforcement  
7 of such right to recovery pursuant to a lien;  
8 requiring the department to adopt rules  
9 governing the recovery of payments; amending s.  
10 381.79, F.S., relating to the Brain and Spinal  
11 Cord Injury Rehabilitation Trust Fund;  
12 redesignating the fund as the "Brain and Spinal  
13 Cord Injury Program Trust Fund"; providing  
14 additional purposes for which moneys in the  
15 trust fund may be used; authorizing the  
16 department to accept certain gifts; amending s.  
17 385.103, F.S.; providing for the department to  
18 operate community intervention programs rather  
19 than comprehensive health improvement projects;  
20 revising definitions; revising duties of the  
21 department in operating such services;  
22 requiring the department to adopt rules  
23 governing the operation of community  
24 intervention programs; amending s. 385.207,  
25 F.S., relating to programs in epilepsy control;  
26 conforming a cross-reference; amending s.  
27 402.181, F.S.; providing for certain damages  
28 and injuries caused by patients of institutions  
29 under the Department of Health and specified  
30 other state agencies to be reimbursed under the  
31 State Institutions Claims Program; amending s.

1 514.021, F.S.; requiring the department to  
2 review rules; designating Florida Alzheimer's  
3 Disease Day; providing planning for long-term  
4 community-based supports for specified brain  
5 and spinal cord injury individuals; providing  
6 purpose; providing for compliance with s.  
7 381.775, F.S.; providing for a study and  
8 report; providing base standard for ranking for  
9 services; providing limitation on use of  
10 funding; providing the department with certain  
11 rulemaking authority; providing residency  
12 requirement; providing severability; providing  
13 intent; creating the Jessie Trice Cancer  
14 Prevention Program within the Department of  
15 Health; providing funding contingent upon an  
16 appropriation; creating the Florida Commission  
17 on Excellence in Health Care; providing  
18 legislative findings and intent; providing  
19 definitions; providing duties and  
20 responsibilities; providing for membership,  
21 organization, meetings, procedures, and staff;  
22 providing for reimbursement of travel and  
23 related expenses of certain members; providing  
24 certain evidentiary prohibitions; requiring a  
25 report to the Governor, the President of the  
26 Senate, and the Speaker of the House of  
27 Representatives; providing for termination of  
28 the commission; providing an appropriation;  
29 creating s. 381.00325, F.S.; providing for a  
30 Hepatitis A awareness program; creating s.  
31 154.247, F.S.; authorizing authorities to issue

1 bonds to finance projects for health facilities  
2 or not-for-profit corporations under their  
3 common control outside the geographical limits  
4 of the local agency or outside the state;  
5 providing that certain specialty hospitals are  
6 not exempt from s. 408.036(1), F.S.; amending  
7 s. 400.0065, F.S.; providing duty of the State  
8 Long-Term Care Ombudsman to prepare and submit  
9 annual budget requests; creating s. 400.0066,  
10 F.S.; specifying additional duties of the  
11 Long-Term Care Ombudsman and other state  
12 agencies; limiting administrative charges;  
13 amending ss. 400.0067 and 400.0069, F.S.;  
14 revising provisions relating to appointment and  
15 terms of service of members of the state and  
16 local ombudsman councils; amending ss.  
17 400.0077, 400.0081, and 400.0087, F.S.;  
18 providing authority of the Office of State  
19 Long-Term Care Ombudsman to adopt rules  
20 relating to disclosure of files maintained by  
21 the program, access to facilities and  
22 residents, and monitoring of local ombudsman  
23 councils by the Department of Elderly Affairs;  
24 deleting rulemaking authority of the  
25 department; amending ss. 20.41, 395.3025,  
26 400.0063, 400.0071, 400.0073, 400.0075,  
27 400.0079, 400.0083, 400.0089, 400.0091,  
28 400.021, 400.022, 400.0255, 400.19, 400.191,  
29 400.23, 400.419, 400.428, 400.434, 400.435,  
30 400.4415, 400.619, and 400.628, F.S.;  
31 clarifying and conforming references and

1 cross-references; providing appropriations;  
2 providing for protection of the state's  
3 interest in property purchased or improved with  
4 state funds; amending s. 409.912, F.S.,  
5 relating to cost-effective purchasing of health  
6 care under the Medicaid program; requiring the  
7 agency to implement a Medicaid prescribed-drug  
8 spending-control program; specifying program  
9 components; providing for implementation to the  
10 extent funds are appropriated; authorizing  
11 contracts; requiring an annual report; creating  
12 the Medicaid Pharmaceutical Therapeutics  
13 Committee; providing for membership; providing  
14 for the adoption of a voluntary preferred  
15 prescribed-drug list by the committee;  
16 providing an effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20 Section 1. Paragraph (1) of subsection (1) of section  
21 20.43, Florida Statutes, is amended and subsection (8) is  
22 added to that section to read:

23 20.43 Department of Health.--There is created a  
24 Department of Health.

25 (1) The purpose of the Department of Health is to  
26 promote and protect the health of all residents and visitors  
27 in the state through organized state and community efforts,  
28 including cooperative agreements with counties. The  
29 department shall:

30 (1) Include in the department's strategic plan  
31 developed under s. 186.021 an assessment of ~~Biennially~~

1 ~~publish, and annually update, a state health plan that~~  
2 ~~assesses~~ current health programs, systems, and costs; ~~makes~~  
3 projections of future problems and opportunities; and  
4 recommended ~~recommends~~ changes that are needed in the health  
5 care system to improve the public health.

6 (8) The department may hold copyrights, trademarks,  
7 and service marks and enforce its rights with respect thereto,  
8 except such authority does not extend to any public records  
9 relating to the department's responsibilities for health care  
10 practitioners regulated under part II, chapter 455.

11 Section 2. Section 39.303, Florida Statutes, is  
12 amended to read:

13 39.303 Child protection teams; services; eligible  
14 cases.--The Children's Medical Services Program in the  
15 Department of Health shall develop, maintain, and coordinate  
16 the services of one or more multidisciplinary child protection  
17 teams in each of the service districts of the Department of  
18 Children and Family Services. Such teams may be composed of  
19 appropriate representatives of school districts and  
20 appropriate health, mental health, social service, legal  
21 service, and law enforcement agencies. The Legislature finds  
22 that optimal coordination of child protection teams and sexual  
23 abuse treatment programs requires collaboration between the  
24 Department of Health and the Department of Children and Family  
25 Services. The two departments shall maintain an interagency  
26 agreement that establishes protocols for oversight and  
27 operations of child protection teams and sexual abuse  
28 treatment programs. The Secretary of Health and the Deputy  
29 Secretary ~~director~~ of Children's Medical Services, in  
30 consultation with the Secretary of Children and Family  
31 Services, shall maintain the responsibility for the screening,



1 employment, and, if necessary, the termination of child  
2 protection team medical directors, at headquarters and in the  
3 15 districts. Child protection team medical directors shall be  
4 responsible for oversight of the teams in the districts.

5 (1) The Department of Health shall utilize and convene  
6 the teams to supplement the assessment and protective  
7 supervision activities of the family safety and preservation  
8 program of the Department of Children and Family Services.

9 Nothing in this section shall be construed to remove or reduce  
10 the duty and responsibility of any person to report pursuant  
11 to this chapter all suspected or actual cases of child abuse,  
12 abandonment, or neglect or sexual abuse of a child. The role  
13 of the teams shall be to support activities of the program and  
14 to provide services deemed by the teams to be necessary and  
15 appropriate to abused, abandoned, and neglected children upon  
16 referral. The specialized diagnostic assessment, evaluation,  
17 coordination, consultation, and other supportive services that  
18 a child protection team shall be capable of providing include,  
19 but are not limited to, the following:

20 (a) Medical diagnosis and evaluation services,  
21 including provision or interpretation of X rays and laboratory  
22 tests, and related services, as needed, and documentation of  
23 findings relative thereto.

24 (b) Telephone consultation services in emergencies and  
25 in other situations.

26 (c) Medical evaluation related to abuse, abandonment,  
27 or neglect, as defined by policy or rule of the Department of  
28 Health.

29 (d) Such psychological and psychiatric diagnosis and  
30 evaluation services for the child or the child's parent or  
31 parents, legal custodian or custodians, or other caregivers,

1 or any other individual involved in a child abuse,  
2 abandonment, or neglect case, as the team may determine to be  
3 needed.

4 (e) Expert medical, psychological, and related  
5 professional testimony in court cases.

6 (f) Case staffings to develop treatment plans for  
7 children whose cases have been referred to the team. A child  
8 protection team may provide consultation with respect to a  
9 child who is alleged or is shown to be abused, abandoned, or  
10 neglected, which consultation shall be provided at the request  
11 of a representative of the family safety and preservation  
12 program or at the request of any other professional involved  
13 with a child or the child's parent or parents, legal custodian  
14 or custodians, or other caregivers. In every such child  
15 protection team case staffing, consultation, or staff activity  
16 involving a child, a family safety and preservation program  
17 representative shall attend and participate.

18 (g) Case service coordination and assistance,  
19 including the location of services available from other public  
20 and private agencies in the community.

21 (h) Such training services for program and other  
22 employees of the Department of Children and Family Services,  
23 employees of the Department of Health, and other medical  
24 professionals as is deemed appropriate to enable them to  
25 develop and maintain their professional skills and abilities  
26 in handling child abuse, abandonment, and neglect cases.

27 (i) Educational and community awareness campaigns on  
28 child abuse, abandonment, and neglect in an effort to enable  
29 citizens more successfully to prevent, identify, and treat  
30 child abuse, abandonment, and neglect in the community.

31

1           (2) The child abuse, abandonment, and neglect reports  
2 that must be referred by the Department of Children and Family  
3 Services to child protection teams of the Department of Health  
4 for medical evaluation and available support services as set  
5 forth in subsection (1) must include cases involving:

6           (a) Bruises, burns, or fractures in a child of any  
7 age.

8           (b) Sexual abuse of a child in which vaginal or anal  
9 penetration is alleged or in which other unlawful sexual  
10 conduct has been determined to have occurred.

11           (c) Venereal disease, or any other sexually  
12 transmitted disease, in a prepubescent child.

13           (d) Reported malnutrition of a child and failure of a  
14 child to thrive.

15           (e) Reported medical, physical, or emotional neglect  
16 of a child.

17           (f) Any family in which one or more children have been  
18 pronounced dead on arrival at a hospital or other health care  
19 facility, or have been injured and later died, as a result of  
20 suspected abuse, abandonment, or neglect, when any sibling or  
21 other child remains in the home.

22           (g) Symptoms of serious emotional problems in a child  
23 when emotional or other abuse, abandonment, or neglect is  
24 suspected.

25           (h) Injuries to a child's head.

26           (3) All abuse and neglect cases transmitted for  
27 investigation to a district by the hotline must be  
28 simultaneously transmitted to the Department of Health child  
29 protection team for review. All cases transmitted to the child  
30 protection team which meet the criteria in subsection (2) must  
31 be timely reviewed by a board-certified pediatrician or

1 registered nurse practitioner under the supervision of such  
2 pediatrician for the purpose of determining whether a  
3 face-to-face medical evaluation by a child protection team is  
4 necessary. Such face-to-face medical evaluation is not  
5 necessary only if it is determined that the child was examined  
6 by a physician for the alleged abuse or neglect, and a  
7 consultation between the child protection team board-certified  
8 pediatrician or nurse practitioner and the examining physician  
9 concludes that a further medical evaluation is unnecessary.

10 (4) In all instances in which a child protection team  
11 is providing certain services to abused, abandoned, or  
12 neglected children, other offices and units of the Department  
13 of Health, and offices and units of the Department of Children  
14 and Family Services, shall avoid duplicating the provision of  
15 those services.

16 Section 3. Subsection (15) of section 120.80, Florida  
17 Statutes, is amended to read:

18 120.80 Exceptions and special requirements;  
19 agencies.--

20 (15) DEPARTMENT OF HEALTH.--Notwithstanding s.  
21 120.57(1)(a), formal hearings may not be conducted by the  
22 Secretary of Health, the director of the Agency for Health  
23 Care Administration, or a board or member of a board within  
24 the Department of Health or the Agency for Health Care  
25 Administration for matters relating to the regulation of  
26 professions, as defined by part II of chapter 455.  
27 Notwithstanding s. 120.57(1)(a), hearings conducted within the  
28 Department of Health in execution of the Special Supplemental  
29 Nutrition Program for Women, Infants, and Children; Child Care  
30 Food Program; Children's Medical Services Program; the Brain  
31 and Spinal Cord Injury Program; and the exemption from

1 disqualification reviews for certified nurse assistants  
2 program need not be conducted by an administrative law judge  
3 assigned by the division. The Department of Health may  
4 contract with the Department of Children and Family Services  
5 for a hearing officer in these matters.

6 Section 4. Subsections (2) and (5) of section 154.011,  
7 Florida Statutes, are amended to read:

8 154.011 Primary care services.--

9 (2) The department shall monitor, measure, and  
10 evaluate ~~be responsible for monitoring, measuring, and~~  
11 ~~evaluating the quality of care, cost-effectiveness, services,~~  
12 ~~and geographic accessibility~~ provided by each primary care  
13 program ~~and shall utilize the resulting data when~~  
14 ~~renegotiating contracts with counties.~~

15 (5) The department shall adopt rules to govern the  
16 operation of primary care programs authorized by this section.  
17 Such rules shall include, but not be limited to, quality of  
18 care, case management, a definition of income used to  
19 determine eligibility or sliding fees, and Medicaid  
20 participation and shall be developed by the State Health  
21 Officer. Rules governing services to clients under 21 years of  
22 age shall be developed in conjunction with children's medical  
23 services and shall at a minimum include preventive services as  
24 set forth in s. 627.6579.

25 Section 5. Paragraphs (a) and (b) of subsection (1)  
26 and subsection (2) of section 215.5602, Florida Statutes, are  
27 amended to read:

28 215.5602 Florida Biomedical Research Program.--

29 (1) There is established within the Lawton Chiles  
30 Endowment Fund the Florida Biomedical Research Program to  
31 support research initiatives that address the health care

1 problems of Floridians in the areas of cancer, cardiovascular  
2 disease, stroke, and pulmonary disease. The long-term goals of  
3 the program are to:

4 (a) Improve the health of Floridians by researching  
5 better prevention, diagnoses, and treatments for cancer,  
6 cardiovascular disease, stroke, and pulmonary disease.

7 (b) Expand the foundation of biomedical knowledge  
8 relating to the prevention, diagnosis, and treatment of  
9 diseases related to tobacco use, including cancer,  
10 cardiovascular disease, stroke, and pulmonary disease.

11 (2) Funds appropriated from the Lawton Chiles  
12 Endowment Fund to the Department of Health for the purposes of  
13 this section shall be used exclusively for the award of grants  
14 and fellowships under the program established in this section;  
15 for research relating to the prevention, diagnosis, and  
16 treatment of diseases related to tobacco use, including  
17 cancer, cardiovascular disease, stroke, and pulmonary disease;  
18 and for expenses incurred in the administration of this  
19 section.

20 Section 6. Subsection (3) of section 381.0011, Florida  
21 Statutes, is amended to read:

22 381.0011 Duties and powers of the Department of  
23 Health.--It is the duty of the Department of Health to:

24 (3) Include in the department's strategic plan  
25 developed under s. 186.021 a summary of ~~Develop a~~  
26 ~~comprehensive public health plan that addresses~~ all aspects of  
27 the public health mission and ~~establishes~~ health status  
28 objectives to direct the use of public health resources with  
29 an emphasis on prevention.

30  
31

1           Section 7. Paragraph (e) of subsection (1) and  
2 subsection (2) of section 381.003, Florida Statutes, is  
3 amended to read:

4           381.003 Communicable disease and acquired immune  
5 deficiency syndrome prevention and control.--

6           (1) The department shall conduct a communicable  
7 disease prevention and control program as part of fulfilling  
8 its public health mission. A communicable disease is any  
9 disease caused by transmission of a specific infectious agent,  
10 or its toxic products, from an infected person, an infected  
11 animal, or the environment to a susceptible host, either  
12 directly or indirectly. The communicable disease program must  
13 include, but need not be limited to:

14           (e) Programs for the prevention and control of  
15 vaccine-preventable diseases, including programs to immunize  
16 school children as required by s. 232.032 and the development  
17 of an automated, electronic, and centralized database or  
18 registry of immunizations. The department shall ensure that  
19 all children in this state are immunized against  
20 vaccine-preventable diseases. The immunization registry shall  
21 allow the department to enhance current immunization  
22 activities for the purpose of improving the immunization of  
23 all children in this state.

24           1. Except as provided in subparagraph 2., the  
25 department shall include all children born in this state in  
26 the immunization registry by using the birth records from the  
27 Office of Vital Statistics. The department shall add other  
28 children to the registry as immunization services are  
29 provided.

30           2. The parent or guardian of a child may refuse to  
31 have the child included in the immunization registry by

1 signing a form obtained from the department, or from the  
2 health care practitioner or entity that provides the  
3 immunization, which indicates that the parent or guardian does  
4 not wish to have the child included in the immunization  
5 registry. The decision to not participate in the immunization  
6 registry must be noted in the registry.

7 3. The immunization registry shall allow for  
8 immunization records to be electronically transferred to  
9 entities that are required by law to have such records,  
10 including schools, licensed child care facilities, and any  
11 other entity that is required by law to obtain proof of a  
12 child's immunizations.

13 4. Any health care practitioner licensed under chapter  
14 458, chapter 459, or chapter 464 in this state who complies  
15 with rules adopted by the department to access the  
16 immunization registry may, through the immunization registry,  
17 directly access immunization records and update a child's  
18 immunization history or exchange immunization information with  
19 another authorized practitioner, entity, or agency involved in  
20 a child's care. The information included in the immunization  
21 registry must include the child's name, date of birth,  
22 address, and any other unique identifier necessary to  
23 correctly identify the child; the immunization record,  
24 including the date, type of administered vaccine, and vaccine  
25 lot number; and the presence or absence of any adverse  
26 reaction or contraindication related to the immunization.  
27 Information received by the department for the immunization  
28 registry retains its status as confidential medical  
29 information and the department must maintain the  
30 confidentiality of that information as otherwise required by  
31 law. A health care practitioner or other agency that obtains



1 information from the immunization registry must maintain the  
2 confidentiality of any medical records in accordance with s.  
3 455.667 or as otherwise required by law.

4 (2) The department may adopt, repeal, and amend rules  
5 related to the prevention and control of communicable diseases  
6 and the administration of the immunization registry. Such  
7 rules may include, ~~including~~ procedures for investigating  
8 disease, timeframes for reporting disease, requirements for  
9 followup reports of known or suspected exposure to disease,  
10 and procedures for providing access to confidential  
11 information necessary for disease investigations. For purposes  
12 of the immunization registry, the rules may include procedures  
13 for a health care practitioner to obtain authorization to use  
14 the immunization registry, methods for a parent or guardian to  
15 elect not to participate in the immunization registry, and  
16 procedures for a health care practitioner licensed under  
17 chapter 458, chapter 459, or chapter 464 to access and share  
18 electronic immunization records with other entities allowed by  
19 law to have access to the records.

20 Section 8. Section 381.0031, Florida Statutes, is  
21 amended to read:

22 381.0031 Report of diseases of public health  
23 significance to department.--

24 (1) Any practitioner licensed in this state to  
25 practice medicine, osteopathic medicine, chiropractic  
26 medicine, naturopathy, or veterinary medicine; any hospital  
27 licensed under part I of chapter 395; or any laboratory  
28 licensed under chapter 483 that diagnoses or suspects the  
29 existence of a disease of public health significance shall  
30 immediately report the fact to the Department of Health.

31

1           (2) Periodically the department shall issue a list of  
2 infectious or noninfectious diseases determined by it to be a  
3 threat to public health and therefore of significance to  
4 public health and shall furnish a copy of the list to the  
5 practitioners listed in subsection (1).

6           (3) Reports required by this section must be in  
7 accordance with methods specified by rule of the department.

8           (4) Information submitted in reports required by this  
9 section is confidential, exempt from the provisions of s.  
10 119.07(1), and is to be made public only when necessary to  
11 public health. A report so submitted is not a violation of the  
12 confidential relationship between practitioner and patient.

13           (5) The department may obtain and inspect copies of  
14 medical records, records of laboratory tests, and other  
15 medical-related information for reported cases of diseases of  
16 public health significance described in subsection (2). The  
17 department shall examine the records of a person who has a  
18 disease of public health significance only for purposes of  
19 preventing and eliminating outbreaks of disease and making  
20 epidemiological investigations of reported cases of diseases  
21 of public health significance, notwithstanding any other law  
22 to the contrary. Health care practitioners, licensed health  
23 care facilities, and laboratories shall allow the department  
24 to inspect and obtain copies of such medical records and  
25 medical-related information, notwithstanding any other law to  
26 the contrary. Release of medical records and medical-related  
27 information to the department by a health care practitioner,  
28 licensed health care facility, or laboratory, or by an  
29 authorized employee or agent thereof, does not constitute a  
30 violation of the confidentiality of patient records. A health  
31 care practitioner, health care facility, or laboratory, or any

1 employee or agent thereof, may not be held liable in any  
2 manner for damages and is not subject to criminal penalties  
3 for providing patient records to the department as authorized  
4 by this section.

5 ~~(6)(5)~~ The department may adopt rules related to  
6 reporting diseases of significance to public health, which  
7 must specify the information to be included in the report, who  
8 is required to report, the method and time period for  
9 reporting, requirements for enforcement, and required followup  
10 activities by the department which are necessary to protect  
11 public health.

12

13 This section does not affect s. 384.25.

14 Section 9. Paragraphs (d) and (h) of subsection (3) of  
15 section 381.004, Florida Statutes, are amended to read:

16 381.004 Testing for human immunodeficiency virus.--

17 (3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED  
18 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

19 (d) No test result shall be determined as positive,  
20 and no positive test result shall be revealed to any person,  
21 without corroborating or confirmatory tests being conducted  
22 except in the following situations:

23 1. Preliminary test results may be released to  
24 licensed physicians or the medical or nonmedical personnel  
25 subject to the significant exposure for purposes of  
26 subparagraphs (h)10., 11., and 12.

27 2. Preliminary test results may be released to health  
28 care providers and to the person tested when decisions about  
29 medical care or treatment of, or recommendation to, the person  
30 tested and, in the case of an intrapartum or postpartum woman,  
31 when care, treatment, or recommendations regarding her

1 newborn, cannot await the results of confirmatory testing.  
2 Positive preliminary HIV test results shall not be  
3 characterized to the patient as a diagnosis of HIV infection.  
4 Justification for the use of preliminary test results must be  
5 documented in the medical record by the health care provider  
6 who ordered the test. This subparagraph does not authorize  
7 the release of preliminary test results for the purpose of  
8 routine identification of HIV-infected individuals or when HIV  
9 testing is incidental to the preliminary diagnosis or care of  
10 a patient. Corroborating or confirmatory testing must be  
11 conducted as followup to a positive preliminary test. Results  
12 shall be communicated to the patient according to statute  
13 regardless of the outcome. Except as provided in this section,  
14 test results are confidential and exempt from the provisions  
15 of s. 119.07(1).

16 (h) Notwithstanding the provisions of paragraph (a),  
17 informed consent is not required:

18 1. When testing for sexually transmissible diseases is  
19 required by state or federal law, or by rule including the  
20 following situations:

21 a. HIV testing pursuant to s. 796.08 of persons  
22 convicted of prostitution or of procuring another to commit  
23 prostitution.

24 b. Testing for HIV by a medical examiner in accordance  
25 with s. 406.11.

26 2. Those exceptions provided for blood, plasma,  
27 organs, skin, semen, or other human tissue pursuant to s.  
28 381.0041.

29 3. For the performance of an HIV-related test by  
30 licensed medical personnel in bona fide medical emergencies  
31 when the test results are necessary for medical diagnostic

1 purposes to provide appropriate emergency care or treatment to  
2 the person being tested and the patient is unable to consent,  
3 as supported by documentation in the medical record.  
4 Notification of test results in accordance with paragraph (c)  
5 is required.

6           4. For the performance of an HIV-related test by  
7 licensed medical personnel for medical diagnosis of acute  
8 illness where, in the opinion of the attending physician,  
9 obtaining informed consent would be detrimental to the  
10 patient, as supported by documentation in the medical record,  
11 and the test results are necessary for medical diagnostic  
12 purposes to provide appropriate care or treatment to the  
13 person being tested. Notification of test results in  
14 accordance with paragraph (c) is required if it would not be  
15 detrimental to the patient. This subparagraph does not  
16 authorize the routine testing of patients for HIV infection  
17 without informed consent.

18           5. When HIV testing is performed as part of an autopsy  
19 for which consent was obtained pursuant to s. 872.04.

20           6. For the performance of an HIV test upon a defendant  
21 pursuant to the victim's request in a prosecution for any type  
22 of sexual battery where a blood sample is taken from the  
23 defendant voluntarily, pursuant to court order for any  
24 purpose, or pursuant to the provisions of s. 775.0877, s.  
25 951.27, or s. 960.003; however, the results of any HIV test  
26 performed shall be disclosed solely to the victim and the  
27 defendant, except as provided in ss. 775.0877, 951.27, and  
28 960.003.

29           7. When an HIV test is mandated by court order.

30           8. For epidemiological research pursuant to s.  
31 381.0032, for research consistent with institutional review

1 boards created by 45 C.F.R. part 46, or for the performance of  
2 an HIV-related test for the purpose of research, if the  
3 testing is performed in a manner by which the identity of the  
4 test subject is not known and may not be retrieved by the  
5 researcher.

6 9. When human tissue is collected lawfully without the  
7 consent of the donor for corneal removal as authorized by s.  
8 732.9185 or enucleation of the eyes as authorized by s.  
9 732.919.

10 10. For the performance of an HIV test upon an  
11 individual who comes into contact with medical personnel in  
12 such a way that a significant exposure has occurred during the  
13 course of employment or within the scope of practice and where  
14 a blood sample is available that was taken from that  
15 individual voluntarily by medical personnel for other  
16 purposes. The term "medical personnel" includes a licensed or  
17 certified health care professional; an employee of a health  
18 care professional ~~or~~ health care facility; employees of a  
19 laboratory licensed under chapter 483; personnel of a, ~~or~~  
20 blood bank ~~or~~ plasma center; a medical student or other  
21 student who is receiving training as a health care  
22 professional at a health care facility; and a paramedic or  
23 emergency medical technician certified by the department to  
24 perform life-support procedures under ~~as defined in s. 401.23.~~

25 a. Prior to performance of an HIV test on a  
26 voluntarily obtained blood sample, the individual from whom  
27 the blood was obtained shall be requested to consent to the  
28 performance of the test and to the release of the results.  
29 The individual's refusal to consent and all information  
30 concerning the performance of an HIV test and any HIV test  
31 result shall be documented only in the medical personnel's

1 record unless the individual gives written consent to entering  
2 this information on the individual's medical record.

3         b. Reasonable attempts to locate the individual and to  
4 obtain consent shall be made and all attempts must be  
5 documented. If the individual cannot be found, an HIV test may  
6 be conducted on the available blood sample. If the individual  
7 does not voluntarily consent to the performance of an HIV  
8 test, the individual shall be informed that an HIV test will  
9 be performed, and counseling shall be furnished as provided in  
10 this section. However, HIV testing shall be conducted only  
11 after a licensed physician documents, in the medical record of  
12 the medical personnel, that there has been a significant  
13 exposure and that, in the physician's medical judgment, the  
14 information is medically necessary to determine the course of  
15 treatment for the medical personnel.

16         c. Costs of any HIV test of a blood sample performed  
17 with or without the consent of the individual, as provided in  
18 this subparagraph, shall be borne by the medical personnel or  
19 the employer of the medical personnel. However, costs of  
20 testing or treatment not directly related to the initial HIV  
21 tests or costs of subsequent testing or treatment shall not be  
22 borne by the medical personnel or the employer of the medical  
23 personnel.

24         d. In order to utilize the provisions of this  
25 subparagraph, the medical personnel must either be tested for  
26 HIV pursuant to this section or provide the results of an HIV  
27 test taken within 6 months prior to the significant exposure  
28 if such test results are negative.

29         e. A person who receives the results of an HIV test  
30 pursuant to this subparagraph shall maintain the  
31 confidentiality of the information received and of the persons

1 tested. Such confidential information is exempt from s.  
2 119.07(1).

3 f. If the source of the exposure will not voluntarily  
4 submit to HIV testing and a blood sample is not available, the  
5 medical personnel or the employer of such person acting on  
6 behalf of the employee may seek a court order directing the  
7 source of the exposure to submit to HIV testing. A sworn  
8 statement by a physician licensed under chapter 458 or chapter  
9 459 that a significant exposure has occurred and that, in the  
10 physician's medical judgment, testing is medically necessary  
11 to determine the course of treatment constitutes probable  
12 cause for the issuance of an order by the court. The results  
13 of the test shall be released to the source of the exposure  
14 and to the person who experienced the exposure.

15 11. For the performance of an HIV test upon an  
16 individual who comes into contact with medical personnel in  
17 such a way that a significant exposure has occurred during the  
18 course of employment or within the scope of practice of the  
19 medical personnel while the medical personnel provides  
20 emergency medical treatment to the individual; or who comes  
21 into contact with nonmedical personnel in such a way that a  
22 significant exposure has occurred while the nonmedical  
23 personnel provides emergency medical assistance during a  
24 medical emergency. For the purposes of this subparagraph, a  
25 medical emergency means an emergency medical condition outside  
26 of a hospital or health care facility that provides physician  
27 care. The test may be performed only during the course of  
28 treatment for the medical emergency.

29 a. An individual who is capable of providing consent  
30 shall be requested to consent to an HIV test prior to the  
31 testing. The individual's refusal to consent, and all



1 information concerning the performance of an HIV test and its  
2 result, shall be documented only in the medical personnel's  
3 record unless the individual gives written consent to entering  
4 this information on the individual's medical record.

5         b. HIV testing shall be conducted only after a  
6 licensed physician documents, in the medical record of the  
7 medical personnel or nonmedical personnel, that there has been  
8 a significant exposure and that, in the physician's medical  
9 judgment, the information is medically necessary to determine  
10 the course of treatment for the medical personnel or  
11 nonmedical personnel.

12         c. Costs of any HIV test performed with or without the  
13 consent of the individual, as provided in this subparagraph,  
14 shall be borne by the medical personnel or the employer of the  
15 medical personnel or nonmedical personnel. However, costs of  
16 testing or treatment not directly related to the initial HIV  
17 tests or costs of subsequent testing or treatment shall not be  
18 borne by the medical personnel or the employer of the medical  
19 personnel or nonmedical personnel.

20         d. In order to utilize the provisions of this  
21 subparagraph, the medical personnel or nonmedical personnel  
22 shall be tested for HIV pursuant to this section or shall  
23 provide the results of an HIV test taken within 6 months prior  
24 to the significant exposure if such test results are negative.

25         e. A person who receives the results of an HIV test  
26 pursuant to this subparagraph shall maintain the  
27 confidentiality of the information received and of the persons  
28 tested. Such confidential information is exempt from s.  
29 119.07(1).

30         f. If the source of the exposure will not voluntarily  
31 submit to HIV testing and a blood sample was not obtained

1 during treatment for the medical emergency, the medical  
2 personnel, the employer of the medical personnel acting on  
3 behalf of the employee, or the nonmedical personnel may seek a  
4 court order directing the source of the exposure to submit to  
5 HIV testing. A sworn statement by a physician licensed under  
6 chapter 458 or chapter 459 that a significant exposure has  
7 occurred and that, in the physician's medical judgment,  
8 testing is medically necessary to determine the course of  
9 treatment constitutes probable cause for the issuance of an  
10 order by the court. The results of the test shall be released  
11 to the source of the exposure and to the person who  
12 experienced the exposure.

13           12. For the performance of an HIV test by the medical  
14 examiner or attending physician upon an individual who expired  
15 or could not be resuscitated while receiving emergency medical  
16 assistance or care and who was the source of a significant  
17 exposure to medical or nonmedical personnel providing such  
18 assistance or care.

19           a. HIV testing may be conducted only after a licensed  
20 physician documents in the medical record of the medical  
21 personnel or nonmedical personnel that there has been a  
22 significant exposure and that, in the physician's medical  
23 judgment, the information is medically necessary to determine  
24 the course of treatment for the medical personnel or  
25 nonmedical personnel.

26           b. Costs of any HIV test performed under this  
27 subparagraph may not be charged to the deceased or to the  
28 family of the deceased person.

29           c. For the provisions of this subparagraph to be  
30 applicable, the medical personnel or nonmedical personnel must  
31 be tested for HIV under this section or must provide the

1 results of an HIV test taken within 6 months before the  
2 significant exposure if such test results are negative.

3 d. A person who receives the results of an HIV test  
4 pursuant to this subparagraph shall comply with paragraph (e).

5 13. For the performance of an HIV-related test  
6 medically indicated by licensed medical personnel for medical  
7 diagnosis of a hospitalized infant as necessary to provide  
8 appropriate care and treatment of the infant when, after a  
9 reasonable attempt, a parent cannot be contacted to provide  
10 consent. The medical records of the infant shall reflect the  
11 reason consent of the parent was not initially obtained. Test  
12 results shall be provided to the parent when the parent is  
13 located.

14 14. For the performance of HIV testing conducted to  
15 monitor the clinical progress of a patient previously  
16 diagnosed to be HIV positive.

17 15. For the performance of repeated HIV testing  
18 conducted to monitor possible conversion from a significant  
19 exposure.

20 Section 10. Section 381.0059, Florida Statutes, is  
21 amended to read:

22 381.0059 Background screening requirements for school  
23 health services personnel.--

24 (1)(a) Any person who provides services under a school  
25 health services plan pursuant to s. 381.0056 must complete  
26 level 2 screening as provided in chapter 435. A person may  
27 satisfy the requirements of this subsection by submitting  
28 proof of compliance with the requirements of level 2 screening  
29 under s. 435.04, conducted within 12 months before the date  
30 that person initially provides services under a school health  
31 services plan pursuant to s. 381.0056. Any person who provides

1 services under a school health services plan pursuant to s.  
2 381.0056 shall be on probationary status pending the results  
3 of the level 2 screening.

4 (b) In order to conduct level 2 screening, any person  
5 who provides services under a school health services plan  
6 pursuant to s. 381.0056 must furnish to the Department of  
7 Health a full set of fingerprints to enable the department to  
8 conduct a criminal background investigation. Each person who  
9 provides services under a school health services plan pursuant  
10 to s. 381.0056 must file a complete set of fingerprints taken  
11 by an authorized law enforcement officer and must provide  
12 sufficient information for a statewide criminal records  
13 correspondence check through the Florida Department of Law  
14 Enforcement. The Department of Health shall submit the  
15 fingerprints to the Florida Department of Law Enforcement for  
16 a statewide criminal history check, and the Florida Department  
17 of Law Enforcement shall forward the fingerprints to the  
18 Federal Bureau of Investigation for a national criminal  
19 history check.

20 (c) The person subject to the required background  
21 screening or his or her employer must pay the fees required to  
22 obtain the background screening. Payment for the screening and  
23 the abuse registry check must be submitted to the Department  
24 of Health. The Florida Department of Law Enforcement shall  
25 charge the Department of Health for a level 2 screening at a  
26 rate sufficient to cover the costs of such screening pursuant  
27 to s. 943.053(3). The Department of Health shall establish a  
28 schedule of fees to cover the costs of the level 2 screening  
29 and the abuse registry check. The applicant or his or her  
30 employer who pays for the required screening may be reimbursed

31

1 by the Department of Health from funds designated for this  
2 purpose.

3 (2)(a) When the Department of Health has reasonable  
4 cause to believe that grounds exist for the disqualification  
5 of any person providing services under a school health  
6 services plan pursuant to s. 381.0056, as a result of  
7 background screening, it shall notify the person in writing,  
8 stating the specific record that indicates noncompliance with  
9 the level 2 screening standards. The Department of Health must  
10 disqualify any person from providing services under a school  
11 health services plan pursuant to s. 381.0056 if the department  
12 finds that the person is not in compliance with the level 2  
13 screening standards. A person who provides services under a  
14 school health plan pursuant to s. 381.0056 on a probationary  
15 status and who is disqualified because of the results of his  
16 or her background screening may contest that disqualification.

17 (b) As provided in s. 435.07, the Department of Health  
18 may grant an exemption from disqualification to a person  
19 providing services under a school health services plan  
20 pursuant to s. 381.0056 who has not received a professional  
21 license or certification from the Department of Health.

22 (c) As provided in s. 435.07, the Department of Health  
23 may grant an exemption from disqualification to a person  
24 providing services under a school health services plan  
25 pursuant to s. 381.0056 who has received a professional  
26 license or certification from the Department of Health.

27 (3) Any person who is required to undergo the  
28 background screening to provide services under a school health  
29 plan pursuant to s. 381.0056 who refuses to cooperate in such  
30 screening or refuses to submit the information necessary to  
31 complete the screening, including fingerprints, shall be

1 disqualified for employment or volunteering in such position  
2 or, if employed, shall be dismissed.

3 (4) Under penalty of perjury, each person who provides  
4 services under a school health plan pursuant to s. 381.0056  
5 must attest to meeting the level 2 screening requirements for  
6 participation under the plan and agree to inform the  
7 Department of Health immediately if convicted of any  
8 disqualifying offense while providing services under a school  
9 health services plan pursuant to s. 381.0056.

10 (5) As used in this section, the term "person who  
11 provides services under a school health services plan" does  
12 not include an unpaid volunteer who lectures students in group  
13 settings on health education topics.

14 Section 11. Paragraphs (a) and (d) of subsection (5)  
15 of section 381.0101, Florida Statutes, are amended to read:

16 381.0101 Environmental health professionals.--

17 (5) STANDARDS FOR CERTIFICATION.--The department shall  
18 adopt rules that establish minimum standards of education,  
19 training, or experience for those persons subject to this  
20 section. The rules shall also address the process for  
21 application, examination, issuance, expiration, and renewal of  
22 certification and ethical standards of practice for the  
23 profession.

24 (a) Persons employed as environmental health  
25 professionals shall exhibit a knowledge of rules and  
26 principles of environmental and public health law in Florida  
27 through examination. A person may not conduct environmental  
28 health evaluations in a primary program area unless he or she  
29 is currently certified in that program area or works under the  
30 direct supervision of a certified environmental health  
31 professional.

1           1. All persons who begin employment in a primary  
2 environmental health program on or after September 21, 1994,  
3 must be certified in that program within 6 months after  
4 employment.

5           2. Persons employed in the ~~a~~ primary environmental  
6 health program of a food protection program or an onsite  
7 sewage treatment and disposal system prior to September 21,  
8 1994, shall be considered certified while employed in that  
9 position and shall be required to adhere to any professional  
10 standards established by the department pursuant to paragraph  
11 (b), complete any continuing education requirements imposed  
12 under paragraph (d), and pay the certificate renewal fee  
13 imposed under subsection (7).

14           3. Persons employed in the ~~a~~ primary environmental  
15 health program of a food protection program or an onsite  
16 sewage treatment and disposal system prior to September 21,  
17 1994, who change positions or program areas and transfer into  
18 another primary environmental health program area on or after  
19 September 21, 1994, must be certified in that program within 6  
20 months after such transfer, except that they will not be  
21 required to possess the college degree required under  
22 paragraph (e).

23           4. Registered sanitarians shall be considered  
24 certified and shall be required to adhere to any professional  
25 standards established by the department pursuant to paragraph  
26 (b).

27           (d) Persons who are certified shall renew their  
28 certification biennially by completing not less than 24  
29 contact hours of continuing education for each program area in  
30 which they maintain certification, subject to a maximum of 48  
31 hours for multiprogram certification.

1           Section 12. Section 381.731, Florida Statutes, is  
2 amended to read:

3           381.731 Strategic planning ~~Healthy Communities,~~  
4 ~~Healthy People Plan.~~--

5           (1) The Department of Health shall include  
6 population-based health-promotion strategies in the  
7 department's strategic plan developed under s. 186.021 ~~develop~~  
8 ~~a biennial Healthy Communities, Healthy People Plan that shall~~  
9 ~~be submitted to the Governor, the President of the Senate, and~~  
10 ~~the Speaker of the House of Representatives by December 31 of~~  
11 ~~each even-numbered year.~~

12           (2) The strategic plan must include data on the health  
13 status of the state's population, health status objectives and  
14 outcome measures, and public health strategies, including  
15 health promotion strategies. The strategic plan must also  
16 provide an overall conceptual framework for the state's health  
17 promotion programs that considers available information on  
18 mortality, morbidity, disability, and behavioral risk factors  
19 associated with chronic diseases and conditions; ~~proposals for~~  
20 ~~public and private health insurance reforms needed to fully~~  
21 ~~implement the state's health promotion initiative; the best~~  
22 ~~health promotion practices of the county health departments~~  
23 ~~and other states; and proposed educational reforms needed to~~  
24 ~~promote healthy behaviors among the state's school-age~~  
25 ~~children.~~

26           Section 13. Section 381.734, Florida Statutes, is  
27 amended to read:

28           381.734 Healthy Communities, Healthy People Program.--

29           (1) The department shall develop and implement the  
30 Healthy Communities, Healthy People Program, a comprehensive  
31 and community-based health promotion and wellness program.



1 The program shall be designed to reduce major behavioral risk  
2 factors associated with chronic diseases, including those  
3 chronic diseases identified in chapter 385, ~~and injuries and~~  
4 ~~accidents~~, by enhancing the knowledge, skills, motivation, and  
5 opportunities for individuals, organizations, and communities  
6 to develop and maintain healthy lifestyles.

7 (2) The department shall consolidate and use existing  
8 resources, programs, and program data to develop this program,  
9 to avoid duplication of efforts or services. Such resources,  
10 programs, and program data shall include the community  
11 intervention programs operated, ~~but not be limited to, s.~~  
12 ~~381.103, the comprehensive health improvement project under s.~~  
13 ~~385.103, and the comprehensive public health plan, public~~  
14 ~~information, and statewide injury control plan under s.~~  
15 ~~381.0011(3), (8), and (12).~~

16 (3) The program shall include:

17 (a) ~~Biennial~~ Statewide assessments of specific,  
18 causal, and behavioral risk factors that affect the health of  
19 residents of the state.

20 (b) The development of community-based health  
21 promotion programs, incorporating health promotion and  
22 preventive care practices supported in scientific and medical  
23 literature.

24 (c) The development and implementation of statewide  
25 age-specific, disease-specific, and community-specific health  
26 promotion and preventive care strategies using primary,  
27 secondary, and tertiary prevention interventions.

28 (d) ~~The development and implementation of models for~~  
29 ~~testing statewide health promotion of community-based~~  
30 health-promotion model programs that meet specific criteria  
31 and address major risk factors in the state and motivate

1 individuals to permanently adopt healthy behaviors, enhance  
2 self-esteem, and increase social and personal  
3 responsibilities.

4 (e) The enhancement of the department's ~~State Health~~  
5 ~~Office's~~ special initiatives to develop the mental, emotional,  
6 and social competencies of children and adolescents, using  
7 innovative school-based and neighborhood-based approaches to  
8 build self-esteem and prevent later problems such as drug  
9 abuse, poor school performance, criminal behavior, and other  
10 behavioral problems.

11 (f) The development and implementation of a statewide  
12 health education program to educate the public and communities  
13 about health risks and assist them in modifying unhealthy  
14 behaviors.

15 (g) The establishment of a comprehensive program to  
16 inform the public, health care professionals, and communities  
17 about the prevalence of chronic diseases in the state; known  
18 and potential risks, including social and behavioral risks;  
19 and behavior changes that would reduce risks.

20 (h) The development and implementation of a program  
21 for enhancing self-help organizations and volunteer programs  
22 that enlist the support of volunteers in health promotion  
23 activities, particularly persons who serve as role models  
24 because of their public visibility or because of their  
25 recovery from or skill in coping with disease.

26 (i) The development of policies that encourage the use  
27 of alternative community delivery sites for health promotion  
28 and preventive care programs and promote the use of  
29 neighborhood delivery sites that are close to work, home, and  
30 school.

31

1           (j) An emphasis on the importance of a physically  
2 active lifestyle to build self-esteem, reduce morbidity and  
3 mortality associated with chronic disease, and reduce obesity.

4           Section 14. Section 413.46, Florida Statutes, is  
5 transferred, renumbered as section 381.7395, Florida Statutes,  
6 and amended to read:

7           381.7395 ~~413.46~~ Legislative intent.--It is the intent  
8 of the Legislature to ensure the referral of individuals  
9 ~~persons~~ who have moderate-to-severe brain or spinal cord  
10 injuries to the brain and spinal cord injury program,a  
11 coordinated rehabilitation program ~~developed and~~ administered  
12 by the department ~~division~~. The program shall provide eligible  
13 persons, as defined in s. 381.76 ~~s. 413.507~~, the opportunity  
14 to obtain the necessary rehabilitative services enabling them  
15 to be referred to a vocational rehabilitation program or to  
16 return to an appropriate level of functioning in their  
17 community. Further, it is intended that permanent disability  
18 be avoided, whenever possible, through prevention, early  
19 identification, ~~skilled~~ emergency medical services and  
20 transport evacuation procedures, and proper medical and  
21 rehabilitative treatment.

22           Section 15. Section 381.745, Florida Statutes, is  
23 created to read:

24           381.745 Definitions.--As used in ss. 381.739-381.79,  
25 the term:

26           (1) "Activity of daily living" means an activity  
27 required on a frequent basis which permits an individual to  
28 secure or maintain independence. Such activities include, but  
29 are not limited to, personal home care, transportation,  
30 personal-assistance services, housekeeping, shopping,  
31 attending school, communication, and employment.

- 1           (2) "Brain or spinal cord injury" means:  
2           (a) A lesion to the spinal cord or cauda equina,  
3 resulting from external trauma, with evidence of significant  
4 involvement of two of the following deficits or dysfunctions:  
5           1. Motor deficit.  
6           2. Sensory deficit.  
7           3. Bowel and bladder dysfunction.  
8           (b) An insult to the skull, brain, or its covering,  
9 resulting from external trauma that produces an altered state  
10 of consciousness or anatomic motor, sensory, cognitive, or  
11 behavioral deficits.  
12           (3) "Emergency medical evacuation system" means a  
13 department-approved transportation system that provides timely  
14 and skilled emergency care and movement of individuals  
15 believed to have sustained a brain or spinal cord injury.  
16           (4) "Personal-assistance services" means a range of  
17 services, provided by one or more individuals, which are  
18 designed to assist an individual who has a disability to  
19 perform activities of daily living.  
20           (5) "Funded services" means services paid for through  
21 the brain and spinal cord injury program.  
22           (6) "Designated facility" means a facility approved by  
23 the brain and spinal cord injury program which meets the  
24 criteria and standards of care of the brain and spinal cord  
25 injury program for individuals who have sustained a brain or  
26 spinal cord injury.  
27           (7) "Third-party coverage" means any claim for, right  
28 to receive payment for, or any coverage for the payment of any  
29 services under the brain and spinal cord injury program.  
30           (8) "Third-party payment" means any and all payments  
31 received or due as a result of any third-party obligation

1 created by gift, coverage or other contract, settlement or  
2 judicial decision, or action of law.

3 (9) "Transitional living facility" means a  
4 state-approved facility, as defined and licensed under chapter  
5 400, or a facility approved by the brain and spinal cord  
6 injury program in accordance with this chapter.

7 (10) "Trauma center" means a department-approved acute  
8 care facility that provides diagnosis and treatment of  
9 individuals who have sustained a brain or spinal cord injury.

10 Section 16. Section 381.75, Florida Statutes, is  
11 amended to read:

12 381.75 Duties and responsibilities of the department,  
13 of transitional living facilities, and of  
14 residents.--Consistent with the mandate of s. 381.7395 ~~s.~~  
15 ~~413.46~~, the department shall develop and administer a  
16 multilevel treatment program for individuals ~~persons~~ who  
17 sustain ~~have~~ brain or spinal cord injuries and who are  
18 referred to the brain and spinal cord injury program.

19 (1) Within 15 days after any report of an individual ~~a~~  
20 ~~person~~ who has sustained a brain or spinal cord injury, the  
21 department shall notify the individual or the most immediate  
22 available family members of their right to assistance from the  
23 state, the services available, and the eligibility  
24 requirements.

25 (2) The department shall refer individuals ~~persons~~ who  
26 have brain or spinal cord injuries to other state agencies to  
27 assure that rehabilitative services, if desired, are obtained  
28 by that individual ~~person~~.

29 (3) The department, in consultation with emergency  
30 medical service, shall develop standards for an emergency  
31 medical evacuation system that will ensure that all

1 individuals ~~persons~~ who sustain traumatic brain or spinal cord  
2 injuries are transported to a department-approved trauma  
3 center that meets the standards and criteria established by  
4 the emergency medical service and the acute-care standards of  
5 the brain and spinal cord injury program.

6 (4) The department shall develop standards for  
7 designation of rehabilitation centers to provide  
8 rehabilitation services for individuals ~~persons~~ who have brain  
9 or spinal cord injuries.

10 (5) The department shall determine the appropriate  
11 number of designated acute-care facilities, inpatient  
12 rehabilitation centers, and outpatient rehabilitation centers,  
13 needed based on incidence, volume of admissions, and other  
14 appropriate criteria.

15 (6) The department shall develop standards for  
16 designation of transitional living facilities to provide  
17 individuals the opportunity to adjust to their disabilities  
18 and to develop physical and functional skills in a supported  
19 living environment.

20 (a) The Agency for Health Care Administration, in  
21 consultation with the department, shall develop rules for the  
22 licensure of transitional living facilities for individuals  
23 ~~persons~~ who have brain or spinal cord injuries.

24 (b) The goal of a transitional living program for  
25 individuals ~~persons~~ who have brain or spinal cord injuries is  
26 to assist each individual ~~person~~ who has such a disability to  
27 achieve a higher level of independent functioning and to  
28 enable that person to reenter the community. The program shall  
29 be focused on preparing participants to return to community  
30 living.

31

1           (c) A transitional living facility for an individual a  
2 ~~person~~ who has a brain or spinal cord injury shall provide to  
3 such individual person, in a residential setting, a  
4 goal-oriented treatment program designed to improve the  
5 individual's ~~person's~~ physical, cognitive, communicative,  
6 behavioral, psychological, and social functioning, as well as  
7 to provide necessary support and supervision. A transitional  
8 living facility shall offer at least the following therapies:  
9 physical, occupational, speech, neuropsychology, independent  
10 living skills training, behavior analysis for programs serving  
11 brain-injured individuals ~~persons~~, health education, and  
12 recreation.

13           (d) All residents shall use the transitional living  
14 facility as a temporary measure and not as a permanent home or  
15 domicile. The transitional living facility shall develop an  
16 initial treatment plan for each resident within 3 days after  
17 the resident's admission. The transitional living facility  
18 shall develop a comprehensive plan of treatment and a  
19 discharge plan for each resident as soon as practical, but no  
20 later than 30 days after the resident's admission. Each  
21 comprehensive treatment plan and discharge plan must be  
22 reviewed and updated as necessary, but no less often than  
23 quarterly. This subsection does not require the discharge of  
24 an individual who continues to require any of the specialized  
25 services described in paragraph (c) or who is making  
26 measurable progress in accordance with that individual's  
27 comprehensive treatment plan. The transitional living facility  
28 shall discharge any individual who has an appropriate  
29 discharge site and who has achieved the goals of his or her  
30 discharge plan or who is no longer making progress toward the  
31 goals established in the comprehensive treatment plan and the

1 discharge plan. The discharge location must be the least  
2 restrictive environment in which an individual's health,  
3 well-being, and safety is preserved.

4 (7) Recipients of services, under this section, from  
5 any of the facilities referred to in this section shall pay a  
6 fee based on ability to pay.

7 Section 17. Section 381.755, Florida Statutes, is  
8 created to read:

9 381.755 Benefits not assignable.--The right of an  
10 eligible individual to any services provided by the brain and  
11 spinal cord injury program is not transferable or assignable,  
12 and any benefits, including money, goods, or chattels,  
13 received as services under the brain and spinal cord injury  
14 program are exempt from all state, county, and municipal taxes  
15 and from sale under the process of any court, except for  
16 obligations contracted for the purchase of such property.

17 Section 18. Section 381.76, Florida Statutes, is  
18 amended to read:

19 381.76 Eligibility for the brain and spinal cord  
20 injury program.--

21 (1) An individual shall be accepted as eligible for  
22 the brain and spinal cord injury program following  
23 certification by the department that the individual:

24 (a) Has been referred to the central registry pursuant  
25 to s. 381.74; ~~s. 413.48.~~

26 (b) Is a legal resident of this state at the time of  
27 application for services; ~~;~~

28 (c) Has sustained a brain or spinal cord ~~suffered a~~  
29 ~~traumatic injury; as defined in s. 413.20.~~

30 (d) Is medically stable; and ~~as defined by rules of~~  
31 ~~the department.~~



1 (e) Is reasonably expected to achieve reintegration  
2 into the community through ~~rehabilitative~~ services provided by  
3 the brain and spinal cord injury program.

4 (2) ~~If in the event~~ the department is unable to  
5 provide services to all eligible individuals, the department  
6 may establish an order of selection.

7 Section 19. Section 381.765, Florida Statutes, is  
8 created to read:

9 381.765 Retention of title to and disposal of  
10 equipment.--

11 (1) The department may retain title to any property,  
12 tools, instruments, training supplies, equipment, or other  
13 items of value acquired for services provided under the brain  
14 and spinal cord injury program or for personnel employed in  
15 operating the brain and spinal cord injury program, and may  
16 repossess or transfer such property, tools, instruments,  
17 supplies, equipment, or other items of value.

18 (2) The department may offer for sale any surplus  
19 items acquired in operating the brain and spinal cord injury  
20 program when they are no longer necessary or exchange them for  
21 necessary items that may be used to greater advantage. When  
22 any such surplus equipment is sold or exchanged, a receipt for  
23 the equipment shall be taken from the purchaser showing the  
24 consideration given for such equipment and forwarded to the  
25 Treasurer, and any funds received by the brain and spinal cord  
26 injury program pursuant to any such transaction shall be  
27 deposited in the Brain and Spinal Cord Injury Rehabilitation  
28 Trust Fund and shall be available for expenditure for any  
29 purpose consistent with this part.

30  
31

1           (3) The department may adopt rules relating to records  
2 and recordkeeping for department-owned property referenced in  
3 subsections (1) and (2).

4           Section 20. Section 381.775, Florida Statutes, is  
5 created to read:

6           381.775 Applicant and recipient records; confidential  
7 and privileged.--

8           (1) All oral and written records, information,  
9 letters, and reports received, made, or maintained by the  
10 department relative to any applicant for or recipient of  
11 services under the brain and spinal cord injury program are  
12 privileged, confidential, and exempt from s. 119.07(1). Any  
13 person who discloses or releases such records, information, or  
14 communications in violation of this section commits a  
15 misdemeanor of the second degree, punishable as provided in s.  
16 775.082 or s. 775.083. Such records may not be released,  
17 except that:

18           (a) Records may be released to the applicant or  
19 recipient, or his or her representative, upon receipt of a  
20 written waiver from the applicant or recipient. Medical,  
21 psychological, or other information that the department  
22 believes may be harmful to an applicant or recipient may not  
23 be released directly to him or her, but must be provided  
24 through a licensed health care professional designated by the  
25 applicant or recipient.

26           (b) Records that do not identify applicants or  
27 recipients may be released for the purpose of research, when  
28 the research is approved by the department.

29           (c) Records used in administering the brain and spinal  
30 cord injury program may be released as required to administer  
31 the program or as required by an agency or political

1 subdivision of the state in the performance of its duties. Any  
2 agency or political subdivision to which records are released  
3 under this paragraph may not disclose the records to third  
4 parties.

5 (d) Records may be released upon the order of an  
6 administrative law judge, a hearing officer, a judge of  
7 compensation claims, an agency head exercising quasi-judicial  
8 authority, or a judge of a court of competent jurisdiction  
9 following a finding in an in camera proceeding that the  
10 records are relevant to the inquiry before the court and  
11 should be released. The in camera proceeding and all records  
12 relating thereto are confidential and exempt from s.  
13 119.07(1).

14 (e) Whenever an applicant for or recipient of services  
15 under the brain and spinal cord injury program has declared  
16 any intention to harm other persons or property, such  
17 declaration may be disclosed.

18 (f) The department may release personal information  
19 about an applicant for or recipient of services under the  
20 brain and spinal cord injury program in order to protect him  
21 or her or others when the applicant or recipient poses a  
22 threat to his or her own safety or to the safety of others and  
23 shall, upon official request, release such information to law  
24 enforcement agencies investigating the commission of a crime.

25 (2) Records that come into the possession of the  
26 department relative to any applicant for or receipt of  
27 services under the brain and spinal cord injury program and  
28 that are confidential by other provisions of law are  
29 confidential and exempt from s. 119.07(1), and may not be  
30 released by the department, except as provided in this  
31 section.

1 Section 21. Section 381.78, Florida Statutes, is  
2 amended to read:

3 381.78 Advisory council on brain and spinal cord  
4 injuries.--

5 (1) There is created within the department a 16-member  
6 advisory council on brain and spinal cord injuries. The  
7 council shall be composed of a minimum of four individuals  
8 ~~persons~~ who have brain injuries or are family members of  
9 individuals ~~persons~~ who have brain injuries, a minimum of four  
10 individuals ~~persons~~ who have spinal cord injuries or are  
11 family members of individuals ~~persons~~ who have spinal cord  
12 injuries, and a minimum of two individuals ~~persons~~ who  
13 represent the special needs of children who have brain or  
14 spinal cord injuries. The balance of the council members shall  
15 be physicians, other allied health professionals,  
16 administrators of brain and spinal cord injury programs, and  
17 representatives from support groups that have expertise in  
18 areas related to the rehabilitation of individuals ~~persons~~ who  
19 have brain or spinal cord injuries.

20 (2) Members of the council shall be appointed to serve  
21 by the Secretary of Health. All members' terms shall be for 4  
22 years. ~~An individual may not serve more than two terms.~~

23 ~~(a) Eight members of the first appointed council shall~~  
24 ~~serve an initial term of 2 years. This group shall include two~~  
25 ~~persons who have brain injuries or are family members of~~  
26 ~~persons who have brain injuries, two persons who have spinal~~  
27 ~~cord injuries or are family members of persons who have spinal~~  
28 ~~cord injuries, and four other persons from the previous~~  
29 ~~council.~~

30  
31

1           ~~(b) The remaining members of the first appointed~~  
2 ~~council shall serve an initial term of 4 years. Thereafter all~~  
3 ~~members' terms shall be for 4 years.~~

4           (c) Any council member who is unwilling or unable to  
5 properly fulfill the duties of the office shall be succeeded  
6 by an individual ~~a person~~ chosen by the secretary to serve out  
7 the unexpired balance of the replaced council member's term.  
8 If the unexpired balance of the replaced council member's term  
9 is less than 18 months, then, notwithstanding the provisions  
10 of this subsection, the succeeding council member may be  
11 reappointed by the secretary twice.

12           (3) The council shall meet at least two times  
13 annually.

14           (4) The council shall:

15           (a) Provide advice and expertise to the department  
16 ~~division~~ in the preparation, implementation, and periodic  
17 review of the brain and spinal cord injury program ~~as~~  
18 ~~referenced in s. 413.49.~~

19           (b) Annually appoint a five-member committee composed  
20 of one individual ~~person~~ who has a brain injury or has a  
21 family member with a brain injury, one individual ~~person~~ who  
22 has a spinal cord injury or has a family member with a spinal  
23 cord injury, and three members who shall be chosen from among  
24 these representative groups: physicians, other allied health  
25 professionals, administrators of brain and spinal cord injury  
26 programs, and representatives from support groups with  
27 expertise in areas related to the rehabilitation of  
28 individuals ~~persons~~ who have brain or spinal cord injuries,  
29 except that one and only one member of the committee shall be  
30 an administrator of a transitional living facility. Membership  
31

1 on the council is not a prerequisite for membership on this  
2 committee.

3 1. The committee shall perform onsite visits to those  
4 transitional living facilities identified by the Agency for  
5 Health Care Administration as being in possible violation of  
6 the statutes and rules regulating such facilities. The  
7 committee members have the same rights of entry and inspection  
8 granted under s. 400.805(7) to designated representatives of  
9 the agency.

10 2. Factual findings of the committee resulting from an  
11 onsite investigation of a facility pursuant to subparagraph 1.  
12 shall be adopted by the agency in developing its  
13 administrative response regarding enforcement of statutes and  
14 rules regulating the operation of the facility.

15 3. Onsite investigations by the committee shall be  
16 funded by the Health Care Trust Fund.

17 4. Travel expenses for committee members shall be  
18 reimbursed in accordance with s. 112.061.

19 5. Members of the committee shall recuse themselves  
20 from participating in any investigation that would create a  
21 conflict of interest under state law, and the council shall  
22 replace the member, either temporarily or permanently.

23 (5) Members of the advisory council are entitled to  
24 reimbursement for per diem and travel expenses for required  
25 attendance at council meetings in accordance with s. 112.061.  
26 Reasonable expenses for personal-assistance services and  
27 interpreters needed by members during required attendance at  
28 council meetings shall be reimbursed. A member may not receive  
29 any compensation for performing duties specified in, or  
30 arising out of, her or his duties as a council member under  
31 this part, except as otherwise specified in this part.

1           (6) A member of the advisory council may not cast a  
2 vote on any matter that would provide direct financial benefit  
3 to the member or create a conflict of interest under state  
4 law.

5           (7) A member of the advisory council may be removed  
6 from office by the Secretary of Health for malfeasance,  
7 misfeasance, neglect of duty, incompetence, or permanent  
8 inability to perform official duties or for pleading nolo  
9 contendere to, or being found guilty of, a crime. Malfeasance  
10 includes, but is not limited to, a violation of any specific  
11 prohibition within this part.

12           Section 22. Section 381.785, Florida Statutes, is  
13 created to read:

14           381.785 Recovery of third-party payments for funded  
15 services.--

16           (1) Third-party coverage for funded services  
17 constitutes primary coverage.

18           (2) An applicant for or recipient of services funded  
19 under the brain and spinal cord injury program must inform the  
20 brain and spinal cord injury program of any rights she or he  
21 has to third-party payments for such services, and the brain  
22 and spinal cord injury program shall be subrogated to her or  
23 his rights to such third-party payments. The brain and spinal  
24 cord injury program may recover directly from:

25           (a) Any third party that is liable to make a benefit  
26 payment to the provider of the recipient's funded services or  
27 to the recipient under the terms of any contract, settlement,  
28 or award;

29           (b) The recipient, if she or he has received a  
30 third-party payment for funded services provided to her or  
31 him; or

1           (c) The provider of the recipient's funded services,  
2 if third-party payment for such services has been recovered by  
3 the provider.

4           (3) An applicant for or a recipient of funded services  
5 is deemed to have assigned to the brain and spinal cord injury  
6 program her or his rights to any payments for such services  
7 from a third party and to have authorized the brain and spinal  
8 cord injury program to release information with respect to  
9 such services for the sole purpose of obtaining reimbursement.

10           (4) The brain and spinal cord injury program may, in  
11 order to enforce its rights under this section, institute,  
12 intervene in, or join any legal proceeding against a third  
13 party against whom recovery rights arise. Action taken by the  
14 brain and spinal cord injury program does not preclude the  
15 recipient's recovery for that portion of her or his damages  
16 not subrogated to the brain and spinal cord injury program,  
17 and action taken by the recipient does not prejudice the  
18 rights of the brain and spinal cord injury program.

19           (5) When the brain and spinal cord injury program  
20 provides, pays for, or becomes liable for funded services, it  
21 has a lien for the amount of such services upon all causes of  
22 action that accrue to the recipient or to her or his legal  
23 representatives as a result of sickness, injury, disease,  
24 disability, or death due to the liability of a third party  
25 which necessitated funded services. To perfect such lien, a  
26 notice of lien must be filed with the clerk of the circuit  
27 court in the recipient's county of residence. The notice of  
28 lien must contain the name and address of the person to whom  
29 services were furnished and the name, address, and telephone  
30 number of a person at the brain and spinal cord injury program  
31 from whom information regarding the lien can be obtained.



1 Failure of the brain and spinal cord injury program to file a  
2 notice of lien does not affect the program's other rights  
3 provided in this section. Any notice of lien filed as provided  
4 under this subsection is valid for 5 years after filing, and  
5 may be extended for an additional 5-year period by filing a  
6 new notice of lien at any time prior to the expiration of the  
7 original notice of lien.

8 (6) In recovering any payments in accordance with this  
9 section, the brain and spinal cord injury program may make  
10 appropriate settlements.

11 (7) Notwithstanding any other law to the contrary,  
12 payments made for funded services are neither collateral  
13 payments nor collateral sources within the meaning of chapter  
14 86-160, Laws of Florida, or chapter 88-1, Laws of Florida.

15 (8) Notwithstanding any other law to the contrary, the  
16 brain and spinal cord injury program retains all rights and  
17 remedies granted under this section as against moneys paid  
18 under chapter 440.

19 (9) The department shall adopt rules to administer  
20 this section.

21 Section 23. Section 381.79, Florida Statutes, is  
22 amended to read:

23 381.79 Brain and Spinal Cord Injury Program  
24 ~~Rehabilitation~~ Trust Fund.--

25 (1) There is created in the State Treasury the Brain  
26 and Spinal Cord Injury Program ~~Rehabilitation~~ Trust Fund.  
27 Moneys in the fund shall be appropriated to the department for  
28 the purpose of providing the cost of care for brain or spinal  
29 cord injuries as a payor of last resort to residents of this  
30 state, for multilevel programs of care established pursuant to  
31 s. 381.75 ~~s. 413.49~~.

1 (a) Authorization of expenditures for brain or spinal  
2 cord injury care shall be made only by the department.

3 (b) Authorized expenditures include acute care,  
4 rehabilitation, transitional living, equipment, and supplies  
5 necessary for activities of daily living, public information,  
6 prevention, education, and research. In addition, the  
7 department may provide matching funds for public or private  
8 assistance provided under the brain and spinal cord injury  
9 program and may provide funds for any approved expansion of  
10 services for treating individuals who have sustained a brain  
11 or spinal cord injury.

12 (2) The department shall issue a report to the  
13 President of the Senate and the Speaker of the House of  
14 Representatives by March 1 of each year, summarizing the  
15 activities supported by the trust fund.

16 (3) Annually, 5 percent of the revenues deposited  
17 monthly in the fund pursuant to s. 318.21(2)(d) shall be  
18 appropriated to the University of Florida and 5 percent to the  
19 University of Miami for spinal cord injury and brain injury  
20 research. The amount to be distributed to the universities  
21 shall be calculated based on the deposits into the fund for  
22 each quarter in the fiscal year, but may not exceed \$500,000  
23 per university per year. Funds distributed under this  
24 subsection shall be made in quarterly payments at the end of  
25 each quarter during the fiscal year.

26 (4) The Board of Regents shall establish a program  
27 administration process which shall include: an annual  
28 prospective program plan with goals, research design, proposed  
29 outcomes, a proposed budget, an annual report of research  
30 activities and findings, and an annual end-of-year financial  
31 statement. Prospective program plans shall be submitted to the

1 Board of Regents, and funds shall be released upon acceptance  
2 of the proposed program plans. The annual report of research  
3 activities and findings shall be submitted to the Board of  
4 Regents, with the executive summaries submitted to the  
5 President of the Senate, the Speaker of the House of  
6 Representatives, and the Secretary ~~of the Department~~ of  
7 Health.

8 (5) Moneys received under s. 381.785 shall be  
9 deposited into the trust fund and used for the purposes  
10 specified in subsection (1).

11 (6) The department may accept, deposit into the trust  
12 fund, and use for carrying out the purposes of this part gifts  
13 made unconditionally by will or otherwise. Any gift made under  
14 conditions that, in the judgment of the department, are proper  
15 and consistent with this section, the laws of the United  
16 States, and the laws of this state may be accepted and shall  
17 be held, invested, reinvested, and used in accordance with the  
18 conditions of the gift.

19 Section 24. Section 385.103, Florida Statutes, is  
20 amended to read:

21 385.103 Community intervention programs ~~Chronic~~  
22 ~~disease control program.--~~

23 (1) DEFINITIONS.--As used in this section, the term  
24 act:

25 (a) "Chronic disease prevention and control program"  
26 means a program including a combination of ~~at least~~ the  
27 following elements:

- 28 1. Health screening;
- 29 2. Risk factor detection;

30  
31

1           3. Appropriate intervention to enable and encourage  
2 changes in behaviors that create health risks ~~risk factor~~  
3 ~~reversal~~; and

4           4. Counseling in nutrition, physical activity, the  
5 effects of tobacco use, hypertension, blood pressure control,  
6 and diabetes control and the provision of other clinical  
7 prevention services ~~counseling~~.

8           (b) "Community health education program" means a  
9 program involving the planned and coordinated use of the  
10 educational resources available in a community in an effort  
11 to:

12           1. Motivate and assist citizens to adopt and maintain  
13 healthful practices and lifestyles;

14           2. Make available learning opportunities which will  
15 increase the ability of people to make informed decisions  
16 affecting their personal, family, and community well-being and  
17 which are designed to facilitate voluntary adoption of  
18 behavior which will improve or maintain health;

19           3. Reduce, through coordination among appropriate  
20 agencies, duplication of health education efforts; and

21           4. Facilitate collaboration among appropriate agencies  
22 for efficient use of scarce resources.

23           (c) "Community intervention program" ~~"Comprehensive~~  
24 ~~health improvement project"~~ means a program combining the  
25 required elements of ~~both~~ a chronic disease prevention and  
26 control program and a community health education program into  
27 a unified program over which a single administrative entity  
28 has authority and responsibility.

29           (d) "Department" means the Department of Health.

30           ~~(e) "District" means a service district of the~~  
31 ~~department.~~

1           ~~(e)~~(f) "Risk factor" means a factor identified during  
2 the course of an epidemiological study of a disease, which  
3 factor appears to be statistically associated with a high  
4 incidence of that disease.

5           (2) OPERATION OF COMMUNITY INTERVENTION PROGRAMS  
6 ~~COMPREHENSIVE HEALTH IMPROVEMENT PROJECTS~~.--

7           (a) The department shall assist the county health  
8 departments in developing and operating community intervention  
9 programs ~~comprehensive health improvement projects~~ throughout  
10 the state. At a minimum, the community intervention programs  
11 ~~comprehensive health improvement projects~~ shall address one to  
12 three of the following ~~the~~ chronic diseases: ~~of~~ cancer,  
13 diabetes, heart disease, stroke, hypertension, renal disease,  
14 and chronic obstructive lung disease.

15           (b) Existing community resources, when available,  
16 shall be used to support the programs. The department shall  
17 seek funding for the programs from federal and state financial  
18 assistance programs which presently exist or which may be  
19 hereafter created. Additional services, as appropriate, may be  
20 incorporated into a program to the extent that resources are  
21 available. The department may accept gifts and grants in  
22 order to carry out a program.

23           (c) Volunteers shall be used to the maximum extent  
24 possible in carrying out the programs. The department shall  
25 contract for the necessary insurance coverage to protect  
26 volunteers from personal liability while acting within the  
27 scope of their volunteer assignments under a program.

28           (d) The department may contract for the provision of  
29 all or any portion of the services required by a program, and  
30 shall so contract whenever the services so provided are more  
31 cost-efficient than those provided by the department.

1           (e) If the department determines that it is necessary  
2 for clients to help pay for services provided by a program,  
3 the department may require clients to make contribution  
4 therefor in either money or personal services. The amount of  
5 money or value of the personal services shall be fixed  
6 according to a fee schedule established by the department or  
7 by the entity developing the program. In establishing the fee  
8 schedule, the department or the entity developing the program  
9 shall take into account the expenses and resources of a client  
10 and his or her overall ability to pay for the services.

11           (f) The department shall adopt rules governing the  
12 operation of the community intervention programs ~~health~~  
13 ~~improvement projects. These rules shall include guidelines~~  
14 ~~for intake and enrollment of clients into the projects.~~

15           Section 25. Subsection (3) of section 385.207, Florida  
16 Statutes, is amended to read:

17           385.207 Care and assistance of persons with epilepsy;  
18 establishment of programs in epilepsy control.--

19           (3) Revenue for statewide implementation of programs  
20 for epilepsy prevention and education pursuant to this section  
21 shall be derived pursuant to the provisions of s. 318.21(6)~~s.~~  
22 ~~318.18(12)~~and shall be deposited in the Epilepsy Services  
23 Trust Fund, which is hereby established to be administered by  
24 the Department of Health. All funds deposited into the trust  
25 fund shall be invested pursuant to the provisions of s.  
26 18.125. Interest income accruing to such invested funds shall  
27 increase the total funds available under this subsection.

28           Section 26. Section 402.181, Florida Statutes, is  
29 amended to read:

30           402.181 State Institutions Claims Program.--

31

1           (1) There is created a State Institutions Claims  
2 Program, for the purpose of making restitution for property  
3 damages and direct medical expenses for injuries caused by  
4 shelter children or foster children, or escapees, ~~or inmates,~~  
5 or patients of state institutions under the Department of  
6 Children and Family Services, the Department of Health, the  
7 Department of Juvenile Justice, or the Department of  
8 Corrections.

9           (2) Claims for restitution may be filed with the  
10 Department of Legal Affairs at its office in accordance with  
11 regulations prescribed by the Department of Legal Affairs. The  
12 Department of Legal Affairs shall have full power and  
13 authority to hear, investigate, and determine all questions in  
14 respect to such claims and is authorized, within the limits of  
15 current appropriations, to pay individual claims up to \$1,000  
16 or, with respect to children in foster care and their  
17 families, individual claims up to \$1,500. Claims in excess of  
18 these amounts shall continue to require legislative approval.

19           (3)(a) The Department of Legal Affairs shall make or  
20 cause to be made such investigations as it considers necessary  
21 in respect to such claims. Hearings shall be held in  
22 accordance with chapter 120.

23           (b) The Department of Legal Affairs shall work with  
24 the Department of Children and Family Services, the Department  
25 of Health, the Department of Juvenile Justice, and the  
26 Department of Corrections to streamline the process of  
27 investigations, hearings, and determinations with respect to  
28 claims under this section, to ensure that eligible claimants  
29 receive restitution within a reasonable time.

30           Section 27. Section 514.021, Florida Statutes, is  
31 amended to read:

1           514.021 Department authorization.--The department is  
2 authorized to adopt and enforce rules to protect the health,  
3 safety, or welfare of persons using public swimming pools and  
4 bathing places. The department shall review and revise such  
5 rules as necessary, but not less than biennially ~~biannually~~.  
6 Sanitation and safety standards shall include, but not be  
7 limited to, matters relating to structure; appurtenances;  
8 operation; source of water supply; bacteriological, chemical,  
9 and physical quality of water in the pool or bathing area;  
10 method of water purification, treatment, and disinfection;  
11 lifesaving apparatus; measures to ensure safety of bathers;  
12 and measures to ensure the personal cleanliness of bathers.

13           Section 28. February 6th of each year is designated  
14 Florida Alzheimer's Disease Day.

15           Section 29. Long-term community-based supports.--The  
16 department shall, contingent upon specific appropriations for  
17 these purposes:

18           (1) Study the long-term needs for community-based  
19 supports and services for individuals who have sustained  
20 traumatic brain or spinal cord injuries. The purpose of this  
21 study is to prevent inappropriate residential and  
22 institutional placement of these individuals, and promote  
23 placement in the most cost effective and least restrictive  
24 environment. Any placement recommendations for these  
25 individuals shall ensure full utilization of and collaboration  
26 with other state agencies, programs, and community partners.  
27 This study shall be submitted to the Governor, the President  
28 of the Senate, and the Speaker of the House of Representatives  
29 not later than December 31, 2000.

30           (2) Based upon the results of this study, establish a  
31 plan for the implementation of a program of long-term



1 community-based supports and services for individuals who have  
2 sustained traumatic brain or spinal cord injuries who may be  
3 subject to inappropriate residential and institutional  
4 placement as a direct result of such injuries.

5 (a) The program shall be payor of last resort for  
6 program services and expenditures for such services shall be  
7 considered funded services for purposes of section 381.785,  
8 Florida Statutes; however, notwithstanding section 381.79(5),  
9 Florida Statutes, proceeds resulting from this subsection  
10 shall be used solely for this program.

11 (b) The department shall create, by rule, procedures  
12 to ensure, that in the event the program is unable to directly  
13 or indirectly provide such services to all eligible  
14 individuals due to lack of funds, those individuals most at  
15 risk to suffer the greatest harm from an imminent  
16 inappropriate residential or institutional placement are  
17 served first.

18 (c) Every applicant or recipient of the long-term  
19 community-based supports and services program shall have been  
20 a resident of the state for 1 year immediately preceding  
21 application and be a resident of the state at the time of  
22 application.

23 (d) The department shall adopt rules pursuant to  
24 sections 120.536(1) and 120.54, Florida Statutes, to implement  
25 the provision of this subsection.

26 Section 30. If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 invalidity does not affect other provisions or applications of  
29 this act which can be given effect without the invalid  
30 provision or application, and to this end the provisions of  
31 this act are severable.

1           Section 31. (1) It is the intent of the Legislature  
2 to:

3           (a) Reduce the rates of illness and death from lung  
4 cancer and other cancers and improve the quality of life among  
5 low-income African-American and Hispanic populations through  
6 increased access to early, effective screening and diagnosis,  
7 education, and treatment programs.

8           (b) Create a community faith-based disease-prevention  
9 program in conjunction with the Health Choice Network and  
10 other community health centers to build upon the natural  
11 referral and education networks in place within minority  
12 communities and to increase access to health service delivery  
13 in South Florida.

14           (c) Establish a funding source to build upon local  
15 private participation to sustain the operation of the program.

16           (2)(a) There is created the Jessie Trice Cancer  
17 Prevention Program, to be located, for administrative  
18 purposes, within the Department of Health, and operated from  
19 the community health centers within the Health Choice Network  
20 in South Florida.

21           (b) Funding will be provided to develop contracts with  
22 community health centers and local community faith-based  
23 education programs to provide cancer screening, diagnosis,  
24 education, and treatment services to low-income populations  
25 throughout the state. Pilot programs will be initially created  
26 in the communities of Goulds, Naranja, Coconut Grove, Liberty  
27 City, and East Little Havana in Dade County and Dunbar in Lee  
28 County.

29           Section 32. Funds to implement the provisions in this  
30 act are contingent upon a specific appropriation for that  
31 purpose in the General Appropriations Act.

1           Section 33. Florida Commission on Excellence in Health  
2 Care.--

3           (1) LEGISLATIVE FINDINGS AND INTENT.--The Legislature  
4 finds that the health care delivery industry is one of the  
5 largest and most complex industries in Florida. The  
6 Legislature finds that additional focus on strengthening  
7 health care delivery systems by eliminating avoidable mistakes  
8 in the diagnosis and treatment of Floridians holds tremendous  
9 promise to increase the quality of health care services  
10 available to Floridians. To achieve this enhanced focus, it is  
11 the intent of the Legislature to create the Florida Commission  
12 on Excellence in Health Care to facilitate the development of  
13 a comprehensive statewide strategy for improving health care  
14 delivery systems through meaningful reporting standards, data  
15 collection and review, and quality measurement.

16           (2) DEFINITIONS.--As used in this act, the term:

17           (a) "Agency" means the Agency for Health Care  
18 Administration.

19           (b) "Commission" means the Florida Commission on  
20 Excellence in Health Care.

21           (c) "Department" means the Department of Health.

22           (d) "Error," with respect to health care, means an  
23 unintended act, by omission or commission.

24           (e) "Health care practitioner" means any person  
25 licensed under chapter 457; chapter 458; chapter 459; chapter  
26 460; chapter 461; chapter 462; chapter 463; chapter 464;  
27 chapter 465; chapter 466; chapter 467; part I, part II, part  
28 III, part V, part X, part XIII, or part XIV of chapter 468;  
29 chapter 478; chapter 480; part III or part IV of chapter 483;  
30 chapter 484; chapter 486; chapter 490; or chapter 491, Florida  
31 Statutes.

1           (f) "Health care provider" means any health care  
2 facility or other health care organization licensed or  
3 certified to provide approved medical and allied health  
4 services in this state.

5           (3) COMMISSION; DUTIES AND RESPONSIBILITIES.--There is  
6 created the Florida Commission on Excellence in Health Care.  
7 The commission shall:

8           (a) Identify existing data sources that evaluate  
9 quality of care in Florida and collect, analyze, and evaluate  
10 this data.

11           (b) Establish guidelines for data sharing and  
12 coordination.

13           (c) Identify core sets of quality measures for  
14 standardized reporting by appropriate components of the health  
15 care continuum.

16           (d) Recommend a framework for quality measurement and  
17 outcome reporting.

18           (e) Develop quality measures that enhance and improve  
19 the ability to evaluate and improve care.

20           (f) Make recommendations regarding research and  
21 development needed to advance quality measurement and  
22 reporting.

23           (g) Evaluate regulatory issues relating to the  
24 pharmacy profession and recommend changes necessary to  
25 optimize patient safety.

26           (h) Facilitate open discussion of a process to ensure  
27 that comparative information on health care quality is valid,  
28 reliable, comprehensive, understandable, and widely available  
29 in the public domain.

30  
31

1           (i) Sponsor public hearings to share information and  
2 expertise, identify "best practices," and recommend methods to  
3 promote their acceptance.

4           (j) Evaluate current regulatory programs to determine  
5 what changes, if any, need to be made to facilitate patient  
6 safety.

7           (k) Review public and private health care purchasing  
8 systems to determine if there are sufficient mandates and  
9 incentives to facilitate continuous improvement in patient  
10 safety.

11           (l) Analyze how effective existing regulatory systems  
12 are in ensuring continuous competence and knowledge of  
13 effective safety practices.

14           (m) Develop a framework for organizations that  
15 license, accredit, or credential health care practitioners and  
16 health care providers to more quickly and effectively identify  
17 unsafe providers and practitioners and to take action  
18 necessary to remove the unsafe provider or practitioner from  
19 practice or operation until such time as the practitioner or  
20 provider has proven safe to practice or operate.

21           (n) Recommend procedures for development of a  
22 curriculum on patient safety and methods of incorporating such  
23 curriculum into training, licensure, and certification  
24 requirements.

25           (o) Develop a framework for regulatory bodies to  
26 disseminate information on patient safety to health care  
27 practitioners, health care providers, and consumers through  
28 conferences, journal articles and editorials, newsletters,  
29 publications, and Internet websites.

30           (p) Recommend procedures to incorporate recognized  
31 patient safety considerations into practice guidelines and

1 into standards related to the introduction and diffusion of  
2 new technologies, therapies, and drugs.

3 (q) Recommend a framework for development of  
4 community-based collaborative initiatives for error reporting  
5 and analysis and implementation of patient safety  
6 improvements.

7 (r) Evaluate the role of advertising in promoting or  
8 adversely affecting patient safety.

9 (4) MEMBERSHIP, ORGANIZATION, MEETINGS, PROCEDURES,  
10 STAFF.--

11 (a) The commission shall consist of:

12 1. The Secretary of Health and the Director of Health  
13 Care Administration;

14 2. One representative each from the following agencies  
15 or organizations: the Board of Medicine, the Board of  
16 Osteopathic Medicine, the Board of Pharmacy, the Board of  
17 Dentistry, the Board of Nursing, the Florida Dental  
18 Association, the Florida Medical Association, the Florida  
19 Osteopathic Medical Association, the Florida Chiropractic  
20 Association, the Florida Chiropractic Society, the Florida  
21 Podiatric Medical Association, the Florida Nurses Association,  
22 the Florida Organization of Nursing Executives, the Florida  
23 Pharmacy Association, the Florida Society of Health System  
24 Pharmacists, Inc., the Florida Hospital Association, the  
25 Association of Community Hospitals and Health Systems of  
26 Florida, Inc., the Florida League of Health Systems, the  
27 Florida Health Care Risk Management Advisory Council, the  
28 Florida Health Care Association, the Florida Statutory  
29 Teaching Hospital Council, Inc., the Florida Statutory Rural  
30 Hospital Council, the Florida Association of Homes for the  
31 Aging, and the Florida Society for Respiratory Care;

1           3. Two health lawyers, appointed by the Secretary of  
2 Health, one of whom must be a member of the Health Law Section  
3 of The Florida Bar who defends physicians and one of whom must  
4 be a member of the Academy of Florida Trial Lawyers;

5           4. Two representatives of the health insurance  
6 industry, appointed by the Director of Health Care  
7 Administration, one of whom shall represent indemnity plans  
8 and one of whom shall represent managed care;

9           5. Five consumer advocates, consisting of one from the  
10 Association for Responsible Medicine, two appointed by the  
11 Governor, one appointed by the President of the Senate, and  
12 one appointed by the Speaker of the House of Representatives;

13           6. Two legislators, one appointed by the President of  
14 the Senate and one appointed by the Speaker of the House of  
15 Representatives; and

16           7. One representative of a Florida medical school  
17 appointed by the Secretary of Health.

18  
19 Commission membership shall reflect the geographic and  
20 demographic diversity of the state.

21           (b) The Secretary of Health and the Director of Health  
22 Care Administration shall jointly chair the commission.  
23 Subcommittees shall be formed by the joint chairs, as needed,  
24 to make recommendations to the full commission on the subjects  
25 assigned. However, all votes on work products of the  
26 commission shall be at the full commission level, and all  
27 recommendations to the Governor, the President of the Senate,  
28 and the Speaker of the House of Representatives must pass by a  
29 two-thirds vote of the full commission. Sponsoring agencies  
30 and organizations may designate an alternative member who may  
31 attend and vote on behalf of the sponsoring agency or

1 organization in the event the appointed member is unable to  
2 attend a meeting of the commission or any subcommittee. The  
3 commission shall be staffed by employees of the Department of  
4 Health and the Agency for Health Care Administration.  
5 Sponsoring agencies or organizations must fund the travel and  
6 related expenses of their appointed members on the commission.  
7 Travel and related expenses for the consumer members of the  
8 commission shall be reimbursed by the state pursuant to  
9 section 112.061, Florida Statutes. The commission shall hold  
10 its first meeting no later than July 15, 2000.

11 (5) EVIDENTIARY PROHIBITIONS.--

12 (a) The findings, recommendations, evaluations,  
13 opinions, investigations, proceedings, records, reports,  
14 minutes, testimony, correspondence, work product, and actions  
15 of the commission shall be available to the public, but may  
16 not be introduced into evidence at any civil, criminal,  
17 special, or administrative proceeding against a health care  
18 practitioner or health care provider arising out of the  
19 matters which are the subject of the findings of the  
20 commission. Moreover, no member of the commission shall be  
21 examined in any civil, criminal, special, or administrative  
22 proceeding against a health care practitioner or health care  
23 provider as to any evidence or other matters produced or  
24 presented during the proceedings of this commission or as to  
25 any findings, recommendations, evaluations, opinions,  
26 investigations, proceedings, records, reports, minutes,  
27 testimony, correspondence, work product, or other actions of  
28 the commission or any members thereof. However, nothing in  
29 this section shall be construed to mean that information,  
30 documents, or records otherwise available and obtained from  
31 original sources are immune from discovery or use in any



1 civil, criminal, special, or administrative proceeding merely  
2 because they were presented during proceedings of the  
3 commission. Nor shall any person who testifies before the  
4 commission or who is a member of the commission be prevented  
5 from testifying as to matters within his or her knowledge in a  
6 subsequent civil, criminal, special, or administrative  
7 proceeding merely because such person testified in front of  
8 the commission.

9       (b) The findings, recommendations, evaluations,  
10 opinions, investigations, proceedings, records, reports,  
11 minutes, testimony, correspondence, work product, and actions  
12 of the commission shall be used as a guide and resource and  
13 shall not be construed as establishing or advocating the  
14 standard of care for health care practitioners or health care  
15 providers unless subsequently enacted into law or adopted in  
16 rule. Nor shall any findings, recommendations, evaluations,  
17 opinions, investigations, proceedings, records, reports,  
18 minutes, testimony, correspondence, work product, or actions  
19 of the commission be admissible as evidence in any way,  
20 directly or indirectly, by introduction of documents or as a  
21 basis of an expert opinion as to the standard of care  
22 applicable to health care practitioners or health care  
23 providers in any civil, criminal, special, or administrative  
24 proceeding unless subsequently enacted into law or adopted in  
25 rule.

26       (c) No person who testifies before the commission or  
27 who is a member of the commission may specifically identify  
28 any patient, health care practitioner, or health care provider  
29 by name. Moreover, the findings, recommendations, evaluations,  
30 opinions, investigations, proceedings, records, reports,  
31 minutes, testimony, correspondence, work product, and actions

1 of the commission may not specifically identify any patient,  
2 health care practitioner, or health care provider by name.

3 (6) REPORT; TERMINATION.--The commission shall provide  
4 a report of its findings and recommendations to the Governor,  
5 the President of the Senate, and the Speaker of the House of  
6 Representatives no later than February 1, 2001. After  
7 submission of the report, the commission shall continue to  
8 exist for the purpose of assisting the Department of Health,  
9 the Agency for Health Care Administration, and the regulatory  
10 boards in their drafting of proposed legislation and rules to  
11 implement its recommendations and for the purpose of providing  
12 information to the health care industry on its  
13 recommendations. The commission shall be terminated June 1,  
14 2001.

15 Section 34. The sum of \$91,000 in nonrecurring general  
16 revenue is hereby appropriated from the General Revenue Fund  
17 to the Department of Health to cover costs of the Florida  
18 Commission on Excellence in Health Care relating to the travel  
19 and related expenses of staff and consumer members and the  
20 reproduction and dissemination of documents.

21 Section 35. Pursuant to section 187 of chapter 99-397,  
22 Laws of Florida, the Agency for Health Care Administration was  
23 directed to conduct a detailed study and analysis of clinical  
24 laboratory services for kidney dialysis patients in the State  
25 of Florida and to report back to the Legislature no later than  
26 February 1, 2000. The agency reported that additional time and  
27 investigative resources were necessary to adequately respond  
28 to the legislative directives. Therefore, the sum of \$230,000  
29 from the Agency for Health Care Administration Tobacco  
30 Settlement Trust Fund is appropriated to the Agency for Health  
31 Care Administration to contract with the University of South

1 Florida to conduct a review of laboratory test utilization,  
2 any self-referral to clinical laboratories, financial  
3 arrangements among kidney dialysis centers, their medical  
4 directors, referring physicians, and any business  
5 relationships and affiliations with clinical laboratories, and  
6 the quality and effectiveness of kidney dialysis treatment in  
7 this state. A report on the findings from such review shall be  
8 presented to the President of the Senate, the Speaker of the  
9 House of Representatives, and the chairs of the appropriate  
10 substantive committees of the Legislature no later than  
11 February 1, 2001.

12           Section 36. Section 381.00325, Florida Statutes, is  
13 created to read:

14           381.00325 Hepatitis A awareness program.--The  
15 Department of Health shall develop a Hepatitis A awareness  
16 program. This program shall include information regarding the  
17 appropriate education of the public and information regarding  
18 the availability of Hepatitis A vaccine. The department shall  
19 work with private businesses and associations in developing  
20 the program and in disseminating the information.

21           Section 37. Section 154.247, Florida Statutes, is  
22 created to read:

23           154.247 Financing of projects located outside of local  
24 agency.--Notwithstanding any provision of this part to the  
25 contrary, an authority may, if it finds that there will be a  
26 benefit or a cost savings to a health facility located within  
27 its jurisdiction, issue bonds for such health facility to  
28 finance projects for such health facility, or for another  
29 not-for-profit corporation under common control with such  
30 health facility, located outside the geographical limits of  
31 the local agency or outside this state.

1           Section 38. Notwithstanding any provision to the  
2 contrary contained in Committee Substitute for House Bill  
3 2339, enacted in the 2000 Regular Session of the Legislature,  
4 the establishment of a specialty hospital offering a range of  
5 medical services restricted to a defined age or gender group  
6 of the population or a restricted range of services  
7 appropriate to the diagnosis, care, and treatment of patients  
8 with specific categories of medical illnesses or disorders,  
9 through the transfer of beds and services from an existing  
10 hospital in the same county, is not exempt from the provisions  
11 of section 408.036(1), Florida Statutes.

12           Section 39. Subsection (4) of section 20.41, Florida  
13 Statutes, is amended to read:

14           20.41 Department of Elderly Affairs.--There is created  
15 a Department of Elderly Affairs.

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

26           Section 40. Paragraph (h) of subsection (4) of section  
27 395.3025, Florida Statutes, is amended to read:

28           395.3025 Patient and personnel records; copies;  
29 examination.--

30           (4) Patient records are confidential and must not be  
31 disclosed without the consent of the person to whom they

1 pertain, but appropriate disclosure may be made without such  
2 consent to:

3 (h) The State Long-Term Care Ombudsman Council and the  
4 local ~~district~~ long-term care ombudsman councils, with respect  
5 to the records of a patient who has been admitted from a  
6 nursing home or long-term care facility, when the councils are  
7 conducting an investigation involving the patient as  
8 authorized under part II of chapter 400, upon presentation of  
9 identification as a council member by the person making the  
10 request. Disclosure under this paragraph shall only be made  
11 after a competent patient or the patient's representative has  
12 been advised that disclosure may be made and the patient has  
13 not objected.

14 Section 41. Paragraph (b) of subsection (3) of section  
15 400.0063, Florida Statutes, is amended to read:

16 400.0063 Establishment of Office of State Long-Term  
17 Care Ombudsman; designation of ombudsman and legal advocate.--

18 (3)

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

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

24 2. Assisting the state and local ~~district~~ ombudsman  
25 councils in carrying out their responsibilities under this  
26 part.

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

30 4. Serving as legal counsel to the state and local  
31 ~~district~~ ombudsman councils, or individual members thereof,

1 against whom any suit or other legal action is initiated in  
2 connection with the performance of the official duties of the  
3 councils or an individual member.

4 Section 42. Paragraph (f) of subsection (1) and  
5 subsections (2) and (3) of section 400.0065, Florida Statutes,  
6 are amended to read:

7 400.0065 State Long-Term Care Ombudsman; duties and  
8 responsibilities; conflict of interest.--

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

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

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

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

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

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

31

1 (d) Contract for services necessary to carry out the  
2 activities of the office.

3 (e) Apply for, receive, and accept grants, gifts, or  
4 other payments, including, but not limited to, real property,  
5 personal property, and services from a governmental entity or  
6 other public or private entity or person, and make  
7 arrangements for the use of such grants, gifts, or payments.

8 (f) Annually prepare a budget request that shall be  
9 submitted to the Governor by the department for transmittal to  
10 the Legislature.

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

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

26 (h) Enter into a cooperative agreement with the  
27 statewide and district human rights advocacy committees for  
28 the purpose of coordinating advocacy services provided to  
29 residents of long-term care facilities.

30  
31

1           (i) Enter into a cooperative agreement with the office  
2 of state government which is responsible for investigating  
3 Medicaid fraud.

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

5           (a) Have a direct involvement in the licensing or  
6 certification of, or an ownership or investment interest in, a  
7 long-term care facility or a provider of a long-term care  
8 service.

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

11           (c) Receive, or have a right to receive, directly or  
12 indirectly, remuneration, in cash or in kind, under a  
13 compensation agreement with the owner or operator of a  
14 long-term care facility.

15

16 The Department of Elderly Affairs, in consultation with the  
17 ombudsman, shall adopt rules to establish procedures to  
18 identify and eliminate conflicts of interest as described in  
19 this subsection.

20           Section 43. Section 400.0066, Florida Statutes, is  
21 created to read:

22           400.0066 Long-Term Care Ombudsman and departments of  
23 state government.--

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

26           (2) Officials from the Department of Elderly Affairs,  
27 the Agency for Health Care Administration, and the Department  
28 of Children and Family Services shall not interfere in the  
29 performance of official duties of any ombudsman staff or  
30 volunteers.

31



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

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

9           (5) The department may divert from the federal  
10 ombudsman appropriation an amount not to exceed 10 percent of  
11 the federal appropriation for the ombudsman.

12           Section 44. Section 400.0067, Florida Statutes, is  
13 amended to read:

14           400.0067 Establishment of State Long-Term Care  
15 Ombudsman Council; duties; membership.--

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

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

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

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

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

1 investigations. Investigations may consist, in part, of one or  
2 more onsite administrative inspections.

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

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

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

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

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

1 report shall be submitted at least 30 days before the  
2 convening of the regular session of the Legislature and shall,  
3 at a minimum:

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

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

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

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

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

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

29 7. Include a report on the activities of the legal  
30 advocate and other legal advocates acting on behalf of the  
31 local district and state councils.

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

22           (b) The ombudsman, in consultation with the secretary  
23 and the state ombudsman council, shall submit to the Governor  
24 a list of at least eight names of persons who are not serving  
25 on a local council.

26           (c) The Governor shall appoint three members chosen  
27 from the list, at least one of whom must be over 60 years of  
28 age.

29           (d) If the Governor's appointments are not made within  
30 60 days after the ombudsman submits the list, the ombudsman,  
31 in consultation with the State Long-Term Care Ombudsman

1 Council, shall appoint three members, one of whom must be over  
2 60 years of age.

3 (e)(b) All members shall be appointed to serve 3-year  
4 terms. A member of the State Long-Term Care Ombudsman Council  
5 may not serve more than two consecutive terms. Any vacancy  
6 shall be filled in the same manner as the original  
7 appointment. The position of any member missing three  
8 consecutive regular meetings without cause shall be declared  
9 vacant. The finding of the ombudsman regarding cause shall be  
10 final and binding.

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

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

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

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

25 (4)(5) No officer, employee, or representative of the  
26 Office of State Long-Term Care Ombudsman or of the State  
27 Long-Term Care Ombudsman Council, nor any member of the  
28 immediate family of such officer, employee, or representative,  
29 may have a conflict of interest. The Department of Elderly  
30 Affairs, in consultation with the ombudsman, shall adopt rules  
31 to identify and remove conflicts of interest.

1           (5)~~(6)~~ The Department of Elderly Affairs shall make a  
2 separate and distinct request for an appropriation for all  
3 expenses for the state and local ~~district~~ ombudsman councils.

4           Section 45. Section 400.0069, Florida Statutes, is  
5 amended to read:

6           400.0069 Local ~~District~~ long-term care ombudsman  
7 councils; duties; membership.--

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

13           (2) The duties of the local ~~district~~ ombudsman council  
14 are:

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

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

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

26           (d) To review and, if necessary, to comment on, for  
27 their effect on the rights of long-term care facility  
28 residents, all existing or proposed rules, regulations, and  
29 other governmental policies relating to long-term care  
30 facilities.

31

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

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

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

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

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

1 of Elderly Affairs serve as a member or as an ex officio  
2 member of a council. Each member of the council shall certify  
3 that neither the council member nor any member of the council  
4 member's immediate family has any conflict of interest  
5 pursuant to subsection (10). Local District ombudsman  
6 councils are encouraged to recruit council members who are 60  
7 years of age or older.

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

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

27 (7) The local district ombudsman council shall meet  
28 upon the call of the chair or the ombudsman, at least once a  
29 month or more frequently as needed to handle emergency  
30 situations.

31



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

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

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

24           Section 46. Section 400.0071, Florida Statutes, is  
25 amended to read:

26           400.0071 Complaint procedures.--

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

30           (2) These procedures shall be posted in full view in  
31 every nursing home or long-term care facility. Every resident

1 or representative of a resident shall receive, upon admission  
2 to a nursing home or long-term care facility, a printed copy  
3 of the procedures of the state and the local ~~district~~  
4 ombudsman councils.

5 Section 47. Section 400.0073, Florida Statutes, is  
6 amended to read:

7 400.0073 State and local ~~district~~ ombudsman council  
8 investigations.--

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

13 (a) Contrary to law.

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

16 (c) Based on a mistake of fact.

17 (d) Based on improper or irrelevant grounds.

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

19 (f) Performed in an inefficient manner.

20 (g) Otherwise erroneous.

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

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

27 (4) In addition to any specific investigation made  
28 pursuant to a complaint, the local ~~district~~ ombudsman council  
29 shall conduct, at least annually, an investigation, which  
30 shall consist, in part, of an onsite administrative  
31

1 inspection, of each nursing home or long-term care facility  
2 within its jurisdiction.

3 (5) Any onsite administrative inspection conducted by  
4 an ombudsman council shall be subject to the following:

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

8 (b) No advance notice of an inspection shall be  
9 provided to any nursing home or long-term care facility,  
10 except that notice of followup inspections on specific  
11 problems may be provided.

12 (c) Inspections shall be conducted in a manner which  
13 will impose no unreasonable burden on nursing homes or  
14 long-term care facilities, consistent with the underlying  
15 purposes of this part. Unnecessary duplication of efforts  
16 among council members or the councils shall be reduced to the  
17 extent possible.

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

21 (e) Inspections may not unreasonably interfere with  
22 the programs and activities of clients within the facility.  
23 Ombudsman council members shall respect the rights of  
24 residents.

25 (f) All inspections shall be limited to compliance  
26 with parts II, III, and VII of this chapter and 42 U.S.C. ss.  
27 1396(a) et seq., and any rules or regulations promulgated  
28 pursuant to such laws.

29 (g) No ombudsman council member shall enter a  
30 single-family residential unit within a long-term care  
31

1 facility without the permission of the resident or the  
2 representative of the resident.

3 (h) Any inspection resulting from a specific complaint  
4 made to an ombudsman council concerning a facility shall be  
5 conducted within a reasonable time after the complaint is  
6 made.

7 (6) An inspection may not be accomplished by forcible  
8 entry. Refusal of a long-term care facility to allow entry of  
9 any ombudsman council member constitutes a violation of part  
10 II, part III, or part VII of this chapter.

11 Section 48. Section 400.0075, Florida Statutes, is  
12 amended to read:

13 400.0075 Complaint resolution procedures.--

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

25 (a) Extend the target date if the council has reason  
26 to believe such action would facilitate the resolution of the  
27 complaint.

28 (b) In accordance with s. 400.0077, publicize the  
29 complaint, the recommendations of the council, and the  
30 response of the long-term care facility.

31

1           (c) Refer the complaint to the state ombudsman  
2 council.

3  
4 If the health, safety, welfare, or rights of the resident are  
5 in imminent danger, the local ~~district~~ long-term care  
6 ombudsman council may seek immediate legal or administrative  
7 remedies to protect the resident.

8           (2) Upon referral from the local ~~district~~ ombudsman  
9 council, the state ombudsman council shall assume the  
10 responsibility for the disposition of the complaint. If a  
11 long-term care facility fails to take action on a complaint  
12 found valid by the state ombudsman council, the state council  
13 may:

14           (a) In accordance with s. 400.0077, publicize the  
15 complaint, the recommendations of the council, and the  
16 response of the long-term care facility.

17           (b) Recommend to the agency a series of facility  
18 reviews pursuant to s. 400.19(4) to assure correction and  
19 nonrecurrence of conditions that give rise to complaints  
20 against a long-term care facility.

21           (c) Recommend to the agency changes in rules for  
22 inspecting and licensing or certifying long-term care  
23 facilities, and recommend to the Agency for Health Care  
24 Administration changes in rules for licensing and regulating  
25 long-term care facilities.

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

29           (e) Recommend to the Agency for Health Care  
30 Administration that the long-term care facility no longer  
31

1 receive payments under the State Medical Assistance Program  
2 (Medicaid).

3 (f) Recommend that the agency initiate procedures for  
4 revocation of license in accordance with chapter 120.

5 (g) Seek legal, administrative, or other remedies to  
6 protect the health, safety, welfare, or rights of the  
7 resident.

8  
9 If the health, safety, welfare, or rights of the resident are  
10 in imminent danger, the State Long-Term Care Ombudsman Council  
11 shall seek immediate legal or administrative remedies to  
12 protect the resident.

13 (3) The state ombudsman council shall provide, as part  
14 of its annual report required pursuant to s.  
15 400.0067(2)(g)(h), information relating to the disposition of  
16 all complaints to the Department of Elderly Affairs.

17 Section 49. Paragraph (a) of subsection (1) and  
18 subsections (4) and (5) of section 400.0077, Florida Statutes,  
19 are amended to read:

20 400.0077 Confidentiality.--

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

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

25 (4) Members of any state or local ~~district~~ ombudsman  
26 council shall not be required to testify in any court with  
27 respect to matters held to be confidential under s. 400.414  
28 except as may be necessary to enforce the provisions of this  
29 act.

30 (5) Subject to the provisions of this section, the  
31 Department of Elderly Affairs, in consultation with the

1 ombudsman and the State Long-Term Care Ombudsman Council,  
2 shall adopt rules for the disclosure by the ombudsman or local  
3 ~~district~~ ombudsman councils of files maintained by the  
4 program.

5 Section 50. Subsection (2) of section 400.0079,  
6 Florida Statutes, is amended to read:

7 400.0079 Immunity.--

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

14 Section 51. Section 400.0081, Florida Statutes, is  
15 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 local ~~district~~  
19 long-term care ombudsman councils, or their representatives,  
20 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 has the permission of the resident or  
25 the legal representative of the resident; or

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

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

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

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

3           3. The representative obtains the approval of the  
4 ombudsman.

5           (d) The administrative records, policies, and  
6 documents to which the residents, or the general public, have  
7 access.

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

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

22           (3) The Department of Elderly Affairs, in consultation  
23 with the ombudsman and the State Long-Term Care Ombudsman  
24 Council, shall adopt rules to establish procedures to ensure  
25 access as described in this section.

26           Section 52. Subsections (1) and (2) of section  
27 400.0083, Florida Statutes, are amended to read:

28           400.0083 Interference; retaliation; penalties.--

29           (1) It shall be unlawful for any person, long-term  
30 care facility, or other entity to willfully interfere with a  
31 representative of the Office of ~~the~~ State Long-Term Care



1 Ombudsman, the State Long-Term Care Ombudsman Council, or a  
2 local ~~district~~ long-term care ombudsman council in the  
3 performance of official duties.

4 (2) It shall be unlawful for any person, long-term  
5 care facility, or other entity to retaliate against any  
6 resident, employee, or other person for filing a complaint  
7 with, providing information to, or otherwise cooperating with  
8 any representative of the Office of ~~the~~ State Long-Term Care  
9 Ombudsman, the State Long-Term Care Ombudsman Council, or a  
10 local ~~district~~ long-term care ombudsman council.

11 Section 53. Section 400.0087, Florida Statutes, is  
12 amended to read:

13 400.0087 Agency oversight.--

14 (1) The Department of Elderly Affairs shall monitor  
15 the local ~~district~~ ombudsman councils responsible for carrying  
16 out the duties delegated by s. 400.0069 and federal law. The  
17 department, in consultation with the ombudsman and the State  
18 Long-Term Care Ombudsman Council, shall adopt rules to  
19 establish the policies and procedures for the monitoring of  
20 local ~~district~~ ombudsman councils.

21 (2) The department is responsible for ensuring that  
22 the Office of State Long-Term Care Ombudsman prepares its  
23 annual report; provides information to public and private  
24 agencies, legislators, and others; provides appropriate  
25 training to representatives of the office or of the state or  
26 local ~~district~~ long-term care ombudsman councils; and  
27 coordinates ombudsman services with the Advocacy Center for  
28 Persons with Disabilities and with providers of legal services  
29 to residents of long-term care facilities in compliance with  
30 state and federal laws.

31

1           (3) The Department of Elderly Affairs is the  
2 designated state unit on aging for purposes of complying with  
3 the federal Older Americans Act. The Department of Elderly  
4 Affairs shall ensure that the ombudsman program has the  
5 objectivity and independence required to qualify it for  
6 funding under the federal Older Americans Act, and shall carry  
7 out the long-term care ombudsman program through the Office of  
8 ~~the~~ State Long-Term Care Ombudsman ~~Council~~. The Department of  
9 Elderly Affairs shall also:

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

13           (b) Act as liaison between the federal program  
14 representatives, the staffs of the state and local ~~district~~  
15 ombudsman councils, and members of the state and local  
16 ~~district~~ ombudsman councils.

17           Section 54. Section 400.0089, Florida Statutes, is  
18 amended to read:

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

1 state or federal entities that the ombudsman determines  
2 appropriate.

3 Section 55. 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 local ~~district~~  
8 long-term care ombudsman councils, including all unpaid  
9 volunteers. 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 local ~~district~~  
12 long-term care ombudsman councils, other than the ombudsman,  
13 may carry out any authorized ombudsman duty or responsibility  
14 unless the person has received the training required by this  
15 section and has been approved by the ombudsman as qualified to  
16 carry out ombudsman activities on behalf of the office or the  
17 state or local ~~district~~ long-term care ombudsman councils.

18 Section 56. Present subsections (8), (9), and (10) of  
19 section 400.021, Florida Statutes, are renumbered as  
20 subsections (7), (8), and (9), respectively, and present  
21 subsection (7) is renumbered as subsection (10) and amended to  
22 read:

23 400.021 Definitions.--When used in this part, unless  
24 the context otherwise requires, the term:

25 ~~(10)(7)~~ "Local ~~District~~ ombudsman council" means a  
26 local ~~district~~ long-term care ombudsman council established  
27 pursuant to s. 400.0069, located within the Older Americans  
28 Act planning and service areas.

29 Section 57. Paragraph (c) of subsection (1) and  
30 subsections (2) and (3) of section 400.022, Florida Statutes,  
31 are amended to read:

1           400.022 Residents' rights.--

2           (1) All licensees of nursing home facilities shall  
3 adopt and make public a statement of the rights and  
4 responsibilities of the residents of such facilities and shall  
5 treat such residents in accordance with the provisions of that  
6 statement. The statement shall assure each resident the  
7 following:

8           (c) Any entity or individual that provides health,  
9 social, legal, or other services to a resident has the right  
10 to have reasonable access to the resident. The resident has  
11 the right to deny or withdraw consent to access at any time by  
12 any entity or individual. Notwithstanding the visiting policy  
13 of the facility, the following individuals must be permitted  
14 immediate access to the resident:

15           1. Any representative of the federal or state  
16 government, including, but not limited to, representatives of  
17 the Department of Children and Family Services, the Department  
18 of Health, the Agency for Health Care Administration, the  
19 Office of the Attorney General, and the Department of Elderly  
20 Affairs; any law enforcement officer; members of the state or  
21 local ~~district~~ ombudsman council; and the resident's  
22 individual physician.

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

25  
26 The facility must allow representatives of the State Long-Term  
27 Care Ombudsman Council to examine a resident's clinical  
28 records with the permission of the resident or the resident's  
29 legal representative and consistent with state law.

30           (2) The licensee for each nursing home shall orally  
31 inform the resident of the resident's rights and provide a

1 copy of the statement required by subsection (1) to each  
2 resident or the resident's legal representative at or before  
3 the resident's admission to a facility. The licensee shall  
4 provide a copy of the resident's rights to each staff member  
5 of the facility. Each such licensee shall prepare a written  
6 plan and provide appropriate staff training to implement the  
7 provisions of this section. The written statement of rights  
8 must include a statement that a resident may file a complaint  
9 with the agency or local ~~district~~ ombudsman council. The  
10 statement must be in boldfaced type and shall include the  
11 name, address, and telephone numbers of the local ~~district~~  
12 ombudsman council and adult abuse registry where complaints  
13 may be lodged.

14 (3) Any violation of the resident's rights set forth  
15 in this section shall constitute grounds for action by the  
16 agency under the provisions of s. 400.102. In order to  
17 determine whether the licensee is adequately protecting  
18 residents' rights, the annual inspection of the facility shall  
19 include private informal conversations with a sample of  
20 residents to discuss residents' experiences within the  
21 facility with respect to rights specified in this section and  
22 general compliance with standards, and consultation with the  
23 ombudsman council in the local ~~district~~ in which the nursing  
24 home is located.

25 Section 58. Subsections (8), (9), (11), (12), (13),  
26 and (14) of section 400.0255, Florida Statutes, are amended to  
27 read:

28 400.0255 Resident transfer or discharge; requirements  
29 and procedures; hearings.--

30 (8) The notice required by subsection (7) must be in  
31 writing and must contain all information required by state and

1 federal law, rules, or regulations applicable to Medicaid or  
2 Medicare cases. The agency shall develop a standard document  
3 to be used by all facilities licensed under this part for  
4 purposes of notifying residents of a discharge or transfer.  
5 Such document must include a means for a resident to request  
6 the local ~~district~~ long-term care ombudsman council to review  
7 the notice and request information about or assistance with  
8 initiating a fair hearing with the department's Office of  
9 Appeals Hearings. In addition to any other pertinent  
10 information included, the form shall specify the reason  
11 allowed under federal or state law that the resident is being  
12 discharged or transferred, with an explanation to support this  
13 action. Further, the form shall state the effective date of  
14 the discharge or transfer and the location to which the  
15 resident is being discharged or transferred. The form shall  
16 clearly describe the resident's appeal rights and the  
17 procedures for filing an appeal, including the right to  
18 request the local ~~district~~ ombudsman council to review the  
19 notice of discharge or transfer. A copy of the notice must be  
20 placed in the resident's clinical record, and a copy must be  
21 transmitted to the resident's legal guardian or representative  
22 and to the local ~~district~~ ombudsman council.

23 (9) A resident may request that the local ~~district~~  
24 ombudsman council review any notice of discharge or transfer  
25 given to the resident. When requested by a resident to review  
26 a notice of discharge or transfer, the local ~~district~~  
27 ombudsman council shall do so within 7 days after receipt of  
28 the request. The nursing home administrator, or the  
29 administrator's designee, must forward the request for review  
30 contained in the notice to the local ~~district~~ ombudsman  
31 council within 24 hours after such request is submitted.

1 Failure to forward the request within 24 hours after the  
2 request is submitted shall toll the running of the 30-day  
3 advance notice period until the request has been forwarded.

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

21 (12) After receipt of any notice required under this  
22 section, the local ~~district~~ ombudsman council may request a  
23 private informal conversation with a resident to whom the  
24 notice is directed, and, if known, a family member or the  
25 resident's legal guardian or designee, to ensure that the  
26 facility is proceeding with the discharge or transfer in  
27 accordance with the requirements of this section. If  
28 requested, the local ~~district~~ ombudsman council shall assist  
29 the resident with filing an appeal of the proposed discharge  
30 or transfer.

31

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

3 (a) The resident, or the resident's legal  
4 representative or designee.

5 (b) The facility administrator, or the facility's  
6 legal representative or designee.

7  
8 A representative of the local ~~district~~ long-term care  
9 ombudsman council may be present at all hearings authorized by  
10 this section.

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

14 (a) Names and addresses.

15 (b) Medical services provided.

16 (c) Social and economic conditions or circumstances.

17 (d) Evaluation of personal information.

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

20 (f) Any information received verifying income  
21 eligibility and amount of medical assistance payments. Income  
22 information received from the Social Security Administration  
23 or the Internal Revenue Service must be safeguarded according  
24 to the requirements of the agency that furnished the data.

25  
26 The exemption created by this subsection does not prohibit  
27 access to such information by a local ~~district~~ long-term care  
28 ombudsman council upon request, by a reviewing court if such  
29 information is required to be part of the record upon  
30 subsequent review, or as specified in s. 24(a), Art. I of the  
31 State Constitution.



1           Section 59. Subsection (1) of section 400.19, Florida  
2 Statutes, is amended to read:

3           400.19 Right of entry and inspection.--

4           (1) The agency and any duly designated officer or  
5 employee thereof or a member of the State Long-Term Care  
6 Ombudsman Council or the local ~~district~~ long-term care  
7 ombudsman council shall have the right to enter upon and into  
8 the premises of any facility licensed pursuant to this part,  
9 or any distinct nursing home unit of a hospital licensed under  
10 chapter 395 or any freestanding facility licensed under  
11 chapter 395 that provides extended care or other long-term  
12 care services, at any reasonable time in order to determine  
13 the state of compliance with the provisions of this part and  
14 rules in force pursuant thereto. The right of entry and  
15 inspection shall also extend to any premises which the agency  
16 has reason to believe is being operated or maintained as a  
17 facility without a license, but no such entry or inspection of  
18 any premises shall be made without the permission of the owner  
19 or person in charge thereof, unless a warrant is first  
20 obtained from the circuit court authorizing same. Any  
21 application for a facility license or renewal thereof, made  
22 pursuant to this part, shall constitute permission for and  
23 complete acquiescence in any entry or inspection of the  
24 premises for which the license is sought, in order to  
25 facilitate verification of the information submitted on or in  
26 connection with the application; to discover, investigate, and  
27 determine the existence of abuse or neglect; or to elicit,  
28 receive, respond to, and resolve complaints. The agency shall,  
29 within 60 days after receipt of a complaint made by a resident  
30 or resident's representative, complete its investigation and  
31 provide to the complainant its findings and resolution.

1           Section 60. Subsection (1) of section 400.191, Florida  
2 Statutes, is amended to read:

3           400.191 Availability, distribution, and posting of  
4 reports and records.--

5           (1) The agency shall provide information to the public  
6 about all of the licensed nursing home facilities operating in  
7 the state. The agency shall, within 60 days after an annual  
8 inspection visit or within 30 days after any interim visit to  
9 a facility, send copies of the inspection reports to the local  
10 ~~district~~ long-term care ombudsman council, the agency's local  
11 office, and a public library or the county seat for the county  
12 in which the facility is located.

13           Section 61. Subsection (6) and paragraph (c) of  
14 subsection (7) of section 400.23, Florida Statutes, are  
15 amended to read:

16           400.23 Rules; evaluation and deficiencies; licensure  
17 status.--

18           (6) Prior to conducting a survey of the facility, the  
19 survey team shall obtain a copy of the local ~~district~~  
20 long-term care ombudsman council report on the facility.  
21 Problems noted in the report shall be incorporated into and  
22 followed up through the agency's inspection process. This  
23 procedure does not preclude the local ~~district nursing home~~  
24 ~~and~~ long-term care ~~facility~~ ombudsman council from requesting  
25 the agency to conduct a followup visit to the facility.

26           (7) The agency shall, at least every 15 months,  
27 evaluate all nursing home facilities and make a determination  
28 as to the degree of compliance by each licensee with the  
29 established rules adopted under this part as a basis for  
30 assigning a licensure status to that facility. The agency  
31 shall base its evaluation on the most recent inspection

1 report, taking into consideration findings from other official  
2 reports, surveys, interviews, investigations, and inspections.  
3 The agency shall assign a licensure status of standard or  
4 conditional to each nursing home.

5 (c) In evaluating the overall quality of care and  
6 services and determining whether the facility will receive a  
7 conditional or standard license, the agency shall consider the  
8 needs and limitations of residents in the facility and the  
9 results of interviews and surveys of a representative sampling  
10 of residents, families of residents, ombudsman council members  
11 in the planning and service area ~~district~~ in which the  
12 facility is located, guardians of residents, and staff of the  
13 nursing home facility.

14 Section 62. Subsection (13) of section 400.419,  
15 Florida Statutes, is amended to read:

16 400.419 Violations; administrative fines.--

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

1           Section 63. Subsection (2) of section 400.428, Florida  
2 Statutes, is amended to read:

3           400.428 Resident bill of rights.--

4           (2) The administrator of a facility shall ensure that  
5 a written notice of the rights, obligations, and prohibitions  
6 set forth in this part is posted in a prominent place in each  
7 facility and read or explained to residents who cannot read.  
8 This notice shall include the name, address, and telephone  
9 numbers of the local ~~district~~ ombudsman council and adult  
10 abuse registry and, when applicable, the Advocacy Center for  
11 Persons with Disabilities, Inc., and the district human rights  
12 advocacy committee, where complaints may be lodged. The  
13 facility must ensure a resident's access to a telephone to  
14 call the local ~~district~~ ombudsman council, adult abuse  
15 registry, Advocacy Center for Persons with Disabilities, Inc.,  
16 and district human rights advocacy committee.

17           Section 64. Section 400.434, Florida Statutes, is  
18 amended to read:

19           400.434 Right of entry and inspection.--Any duly  
20 designated officer or employee of the department, the  
21 Department of Children and Family Services, the agency, the  
22 state or local fire marshal, or a member of the state or local  
23 ~~district~~ long-term care ombudsman council shall have the right  
24 to enter unannounced upon and into the premises of any  
25 facility licensed pursuant to this part in order to determine  
26 the state of compliance with the provisions of this part and  
27 of rules or standards in force pursuant thereto. The right of  
28 entry and inspection shall also extend to any premises which  
29 the agency has reason to believe is being operated or  
30 maintained as a facility without a license; but no such entry  
31 or inspection of any premises may be made without the

1 permission of the owner or person in charge thereof, unless a  
2 warrant is first obtained from the circuit court authorizing  
3 such entry. The warrant requirement shall extend only to a  
4 facility which the agency has reason to believe is being  
5 operated or maintained as a facility without a license. Any  
6 application for a license or renewal thereof made pursuant to  
7 this part shall constitute permission for, and complete  
8 acquiescence in, any entry or inspection of the premises for  
9 which the license is sought, in order to facilitate  
10 verification of the information submitted on or in connection  
11 with the application; to discover, investigate, and determine  
12 the existence of abuse or neglect; or to elicit, receive,  
13 respond to, and resolve complaints. Any current valid license  
14 shall constitute unconditional permission for, and complete  
15 acquiescence in, any entry or inspection of the premises by  
16 authorized personnel. The agency shall retain the right of  
17 entry and inspection of facilities that have had a license  
18 revoked or suspended within the previous 24 months, to ensure  
19 that the facility is not operating unlawfully. However, before  
20 entering the facility, a statement of probable cause must be  
21 filed with the director of the agency, who must approve or  
22 disapprove the action within 48 hours. Probable cause shall  
23 include, but is not limited to, evidence that the facility  
24 holds itself out to the public as a provider of personal care  
25 services or the receipt of a complaint by the long-term care  
26 ombudsman council about the facility.

27 Section 65. Subsection (2) of section 400.435, Florida  
28 Statutes, is amended to read:

29 400.435 Maintenance of records; reports.--

30 (2) Within 60 days after the date of the biennial  
31 inspection visit or within 30 days after the date of any

1 interim visit, the agency shall forward the results of the  
2 inspection to the local ~~district~~ ombudsman council in whose  
3 planning and service area, as defined in part II, the facility  
4 is located; to at least one public library or, in the absence  
5 of a public library, the county seat in the county in which  
6 the inspected assisted living facility is located; and, when  
7 appropriate, to the district adult services and district  
8 alcohol, drug abuse, and mental health program offices.

9 Section 66. Paragraph (i) of subsection (1) and  
10 subsection (5) of section 400.4415, Florida Statutes, are  
11 amended to read:

12 400.4415 Assisted living facilities advisory  
13 committee.--

14 (1) There is created the assisted living facilities  
15 advisory committee, which shall assist the agency in  
16 developing and implementing a pilot rating system for  
17 facilities. The committee shall consist of nine members who  
18 are to be appointed by, and report directly to, the director  
19 of the agency. The membership is to include:

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

22 (5) In determining the rating and evaluating the  
23 overall quality of care and services, the agency shall  
24 consider the needs and limitations of residents in the  
25 facility and the results of interviews and surveys of a  
26 representative sampling of residents, families of residents,  
27 long-term care ombudsman council members in the planning and  
28 service area ~~district~~ in which the facility is located,  
29 guardians of residents, and staff of the facility.

30 Section 67. Subsection (7) of section 400.619, Florida  
31 Statutes, is amended to read:

1           400.619 Licensure application and renewal.--

2           (7) Access to a licensed adult family-care home must  
3 be provided at reasonable times for the appropriate officials  
4 of the department, the Department of Health, the Department of  
5 Children and Family Services, the agency, and the State Fire  
6 Marshal, who are responsible for the development and  
7 maintenance of fire, health, sanitary, and safety standards,  
8 to inspect the facility to assure compliance with these  
9 standards. In addition, access to a licensed adult  
10 family-care home must be provided at reasonable times for the  
11 local ~~district~~ long-term care ombudsman council.

12           Section 68. Subsection (2) of section 400.628, Florida  
13 Statutes, is amended to read:

14           400.628 Residents' bill of rights.--

15           (2) The provider shall ensure that residents and their  
16 legal representatives are made aware of the rights,  
17 obligations, and prohibitions set forth in this part.  
18 Residents must also be given the names, addresses, and  
19 telephone numbers of the local ~~district~~ ombudsman council and  
20 the adult abuse registry where they may lodge complaints.

21           Section 69. (1) The sum of \$40,000 is appropriated  
22 from the General Revenue Fund to the Long-Term Care Ombudsman  
23 Program in the Department of Elderly Affairs to be used for  
24 training members of the state and local long-term care  
25 ombudsman councils.

26           (2) The sum of \$40,000 is appropriated from the  
27 General Revenue Fund to the Long-Term Care Ombudsman Program  
28 in the Department of Elderly Affairs to be used for materials  
29 to educate residents of long-term care facilities, their  
30 families, visitors, facility staff, and the public about the

31

1 ombudsman program and to encourage people to seek assistance  
2 from the Long-Term Care Ombudsman Program.

3 Section 70. Each state agency shall include in its  
4 standard contract document a requirement that any state funds  
5 provided for the purchase of or improvements to real property  
6 are contingent upon the contractor or political subdivision  
7 granting to the state a security interest in the property at  
8 least to the amount of state funds provided for at least 5  
9 years from the date of purchase or the completion of the  
10 improvements or as further required by law.

11 Section 71. Subsection (37) is added to section  
12 409.912, Florida Statutes, to read:

13 409.912 Cost-effective purchasing of health care.--The  
14 agency shall purchase goods and services for Medicaid  
15 recipients in the most cost-effective manner consistent with  
16 the delivery of quality medical care. The agency shall  
17 maximize the use of prepaid per capita and prepaid aggregate  
18 fixed-sum basis services when appropriate and other  
19 alternative service delivery and reimbursement methodologies,  
20 including competitive bidding pursuant to s. 287.057, designed  
21 to facilitate the cost-effective purchase of a case-managed  
22 continuum of care. The agency shall also require providers to  
23 minimize the exposure of recipients to the need for acute  
24 inpatient, custodial, and other institutional care and the  
25 inappropriate or unnecessary use of high-cost services.

26 (37)(a) The agency shall implement a Medicaid  
27 prescribed-drug spending-control program that includes the  
28 following components:

29 1. Medicaid prescribed-drug coverage for brand-name  
30 drugs for adult Medicaid recipients not residing in nursing  
31 homes or other institutions is limited to the dispensing of



1 four brand-name drugs per month per recipient. Children and  
2 institutionalized adults are exempt from this restriction.  
3 Antiretroviral agents are excluded from this limitation. No  
4 requirements for prior authorization or other restrictions on  
5 medications used to treat mental illnesses such as  
6 schizophrenia, severe depression, or bipolar disorder may be  
7 imposed on Medicaid recipients. Medications that will be  
8 available without restriction for persons with mental  
9 illnesses include atypical antipsychotic medications,  
10 conventional antipsychotic medications, selective serotonin  
11 re-uptake inhibitors, and other medications used for the  
12 treatment of serious mental illnesses. The agency shall also  
13 limit the amount of a prescribed drug dispensed to no more  
14 than a 34-day supply. The agency shall continue to provide  
15 unlimited generic drugs, contraceptive drugs and items, and  
16 diabetic supplies. The agency may authorize exceptions to the  
17 brand-name-drug restriction, based upon the treatment needs of  
18 the patients, only when such exceptions are based on prior  
19 consultation provided by the agency or an agency contractor,  
20 but the agency must establish procedures to ensure that:  
21 a. There will be a response to a request for prior  
22 consultation by telephone or other telecommunication device  
23 within 24 hours after receipt of a request for prior  
24 consultation; and  
25 b. A 72-hour supply of the drug prescribed will be  
26 provided in an emergency or when the agency does not provide a  
27 response within 24 hours as required by sub-subparagraph a.  
28 2. Reimbursement to pharmacies for Medicaid prescribed  
29 drugs shall be set at the average wholesale price less 13.25  
30 percent.  
31

1           3. The agency shall develop and implement a process  
2 for managing the drug therapies of Medicaid recipients who are  
3 using significant numbers of prescribed drugs each month. The  
4 management process may include, but is not limited to,  
5 comprehensive, physician-directed medical-record reviews,  
6 claims analyses, and case evaluations to determine the medical  
7 necessity and appropriateness of a patient's treatment plan  
8 and drug therapies. The agency may contract with a private  
9 organization to provide drug-program-management services.

10           4. The agency may limit the size of its pharmacy  
11 network based on need, competitive bidding, price  
12 negotiations, credentialing, or similar criteria. The agency  
13 shall give special consideration to rural areas in determining  
14 the size and location of pharmacies included in the Medicaid  
15 pharmacy network. A pharmacy credentialing process may include  
16 criteria such as a pharmacy's full-service status, location,  
17 size, patient educational programs, patient consultation,  
18 disease-management services, and other characteristics. The  
19 agency may impose a moratorium on Medicaid pharmacy enrollment  
20 when it is determined that it has a sufficient number of  
21 Medicaid-participating providers.

22           5. The agency shall develop and implement a program  
23 that requires Medicaid practitioners who prescribe drugs to  
24 use a counterfeit-proof prescription pad for Medicaid  
25 prescriptions. The agency shall require the use of  
26 standardized counterfeit-proof prescription pads by  
27 Medicaid-participating prescribers. The agency may implement  
28 the program in targeted geographic areas or statewide.

29           6. The agency may enter into arrangements that require  
30 manufacturers of generic drugs prescribed to Medicaid  
31 recipients to provide rebates of at least 15.1 percent of the

1 average manufacturer price for the manufacturer's generic  
2 products. These arrangements shall require that if a  
3 generic-drug manufacturer pays federal rebates for  
4 Medicaid-reimbursed drugs at a level below 15.1 percent, the  
5 manufacturer must provide a supplemental rebate to the state  
6 in an amount necessary to achieve a 15.1-percent rebate level.  
7 If a generic-drug manufacturer raises its price in excess of  
8 the Consumer Price Index (Urban), the excess amount shall be  
9 included in the supplemental rebate to the state.

10 (b) The agency shall implement this subsection to the  
11 extent that funds are appropriated to administer the Medicaid  
12 prescribed-drug spending-control program. The agency may  
13 contract all or any part of this program to private  
14 organizations.

15 (c) The agency shall submit a report to the Governor,  
16 the President of the Senate, and the Speaker of the House of  
17 Representatives by January 15 of each year. The report must  
18 include, but need not be limited to, the progress made in  
19 implementing Medicaid cost-containment measures and their  
20 effect on Medicaid prescribed-drug expenditures.

21 Section 72. There is created a Medicaid Pharmaceutical  
22 and Therapeutics Committee. The committee shall develop and  
23 implement a voluntary Medicaid preferred prescribed drug  
24 designation program. The program shall provide information to  
25 Medicaid providers on medically appropriate and cost efficient  
26 prescription drug therapies through the development and  
27 publication of a voluntary Medicaid preferred prescribed-drug  
28 list.

29 (1) The Medicaid Pharmaceutical and Therapeutics  
30 Committee shall be comprised of nine members appointed as  
31 follows: one practicing physician licensed under chapter 458,

1 Florida Statutes, appointed by the Speaker of the House of  
2 Representatives from a list of recommendations from the  
3 Florida Medical Association; one practicing physician licensed  
4 under chapter 459, Florida Statutes, appointed by the Speaker  
5 of the House of Representatives from a list of recommendations  
6 from the Florida Osteopathic Medical Association; one  
7 practicing physician licensed under chapter 458, Florida  
8 Statutes, appointed by the President of the Senate from a list  
9 of recommendations from the Florida Academy of Family  
10 Physicians; one practicing podiatric physician licensed under  
11 chapter 461, Florida Statutes, appointed by the President of  
12 the Florida Senate from a list of recommendations from the  
13 Florida Podiatric Medical Association; one trauma surgeon  
14 licensed under chapter 458, Florida Statutes, appointed by the  
15 Speaker of the House of Representatives from a list of  
16 recommendations from the American College of Surgeons; one  
17 practicing dentist licensed under chapter 466, Florida  
18 Statutes, appointed by the President of the Senate from a list  
19 of recommendations from the Florida Dental Association; one  
20 practicing pharmacist licensed under chapter 465, Florida  
21 Statutes, appointed by the Governor from a list of  
22 recommendations from the Florida Pharmacy Association; one  
23 practicing pharmacist licensed under chapter 465, Florida  
24 Statutes, appointed by the Governor from a list of  
25 recommendations from the Florida Society of Health System  
26 Pharmacists; and one health care professional with expertise  
27 in clinical pharmacology appointed by the Governor from a list  
28 of recommendations from the Pharmaceutical Research and  
29 Manufacturers Association. The members shall be appointed to  
30 serve for terms of 2 years from the date of their appointment.  
31 Members may be appointed to more than one term. The Agency for

1 Health Care Administration shall serve as staff for the  
2 committee and assist them with all ministerial duties.

3 (2) Upon recommendation by the committee, the Agency  
4 for Health Care Administration shall establish the voluntary  
5 Medicaid preferred prescribed-drug list. Upon further  
6 recommendation by the committee, the agency shall add to,  
7 delete from, or modify the list. The committee shall also  
8 review requests for additions to, deletions from, or  
9 modifications of the list. The list shall be adopted by the  
10 committee in consultation with medical specialists, when  
11 appropriate, using the following criteria: use of the list  
12 shall be voluntary by providers and the list must provide for  
13 medically appropriate drug therapies for Medicaid patients  
14 which achieve cost savings in the Medicaid program.

15 (3) The Agency for Health Care Administration shall  
16 publish and disseminate the voluntary Medicaid preferred  
17 prescribed drug list to all Medicaid providers in the state.

18 Section 73. This act shall take effect July 1, 2000.  
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