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2 An act relating to human rights; creating s.
3 402.164, F.S., and amending ss. 402.165,
4 402.166, 402.167, F.S.; renaming the statewide
5 and district human rights advocacy committees
6 as the Florida statewide and local advocacy
7 councils; providing legislative intent with
8 respect to the duties and powers of the
9 councils; defining the terms "client" and
10 "client services" as used in ss.
11 402.164-402.167, F.S.; providing for the duties
12 of the councils with respect to monitoring the
13 activities of, and investigating complaints
14 against, state agencies that provide client
15 services; revising council membership,
16 appointment, officers, and terms of service;
17 providing for revision of local council service
18 areas; providing statewide council staff with
19 select exempt service status; providing for
20 access to records of the state agencies subject
21 to council investigations; providing rulemaking
22 authority to such state agencies; amending ss.
23 39.001, 39.202, 39.302, 393.13, 394.459,
24 394.4595, 394.4597, 394.4598, 394.4599,
25 394.4615, 400.0067, 400.0089, 400.118, 400.141,
26 400.419, 400.428, 415.1034, 415.104, 415.1055,
27 415.106, 415.107, 430.04, F.S.; conforming
28 references; providing an effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
31

1 Section 1. Section 402.164, Florida Statutes, is
2 created to read:

3 402.164 Legislative intent; definition.--

4 (1)(a) It is the intent of the Legislature to use
5 citizen volunteers as members of the Florida Statewide
6 Advocacy Council and the Florida local advocacy councils, and
7 to have volunteers operate a network of councils that shall,
8 without interference by an executive agency, undertake to
9 discover, monitor, investigate, and determine the presence of
10 conditions or individuals that constitute a threat to the
11 rights, health, safety, or welfare of persons who receive
12 services from state agencies.

13 (b) It is the further intent of the Legislature that
14 the monitoring and investigation shall safeguard the health,
15 safety, and welfare of consumers of services provided by these
16 state agencies.

17 (2) As used in ss. 402.164-402.167, the term:

18 (a) "Client" means a client as defined in s. 393.063,
19 s. 394.67, s. 397.311, or s. 400.960, a forensic client or
20 client as defined in s. 916.106, a child or youth as defined
21 in s. 39.01, a child as defined in s. 827.01, a family as
22 defined in s. 414.0252, a participant as defined in s.
23 400.551, a resident as defined in s. 400.402, a Medicaid
24 recipient or recipient as defined in s. 409.901, a child
25 receiving childcare as defined in s. 402.302, a disabled adult
26 as defined in s. 410.032 or s. 410.603, or a victim as defined
27 in s. 39.01 or s. 415.102 as each definition applies within
28 its respective chapter.

29 (b) "Client services" means services which are
30 provided to a client by a state agency or a service provider
31 operated, funded, or contracted by the state.

1 Section 2. Section 402.165, Florida Statutes, is
2 amended to read:
3 402.165 Florida Statewide Advocacy Council ~~Statewide~~
4 ~~Human Rights Advocacy Committee~~; confidential records and
5 meetings.--
6 (1) ~~The~~ ~~There is created within the Department of~~
7 ~~Children and Family Services~~ a Statewide Human Rights Advocacy
8 Committee within the Department of Children and Family
9 Services is redesignated as the Florida Statewide Advocacy
10 Council. Members of the council shall represent the interests
11 of clients who are served by state agencies that provide
12 client services. The Department of Children and Family
13 Services shall provide administrative support and service to
14 the statewide council ~~committee~~ to the extent requested by the
15 executive director within available resources. The statewide
16 council is not ~~Human Rights Advocacy Committee shall not be~~
17 subject to control, supervision, or direction by the
18 Department of Children and Family Services in the performance
19 of its duties. The council ~~committee~~ shall consist of 15
20 residents of this state ~~citizens~~, one from each service area
21 designated by the statewide council ~~district of the Department~~
22 ~~of Children and Family Services~~, who broadly represent the
23 interests of the public and the clients of the state agencies
24 that provide client services ~~that department~~. The members
25 shall be representative of four ~~five~~ groups of state residents
26 citizens as follows: one provider who delivers ~~elected public~~
27 official; ~~two providers who deliver~~ client services as defined
28 in s. 402.164(2); ~~two or programs to clients of the Department~~
29 ~~of Children and Family Services~~; ~~four~~ nonsalaried
30 representatives of nonprofit agencies or civic groups; four
31 representatives of ~~health and rehabilitative services~~ consumer

1 groups who are currently receiving, or have received, client
2 ~~services from the Department of Children and Family Services~~
3 within the past 4 years, at least one of whom must be a
4 consumer of one or more client services; and ~~two~~ four
5 residents of the state who do not represent any of the
6 foregoing groups, ~~one~~ two of whom ~~represents the~~ represent
7 health-related professions and ~~one~~ two of whom ~~represents~~
8 ~~represent~~ the legal profession. In appointing the
9 representative ~~representatives~~ of the health-related
10 professions, the appointing authority shall give priority of
11 consideration to a physician licensed under chapter 458 or
12 chapter 459; and, in appointing the representative
13 ~~representatives~~ of the legal profession, the appointing
14 authority shall give priority of consideration to a member in
15 good standing of The Florida Bar. Of the remaining members, no
16 more than one shall be an elected official; no more than one
17 shall be a health professional; no more than one shall be a
18 legal professional; no more than one shall be a provider; no
19 more than two shall be nonsalaried representatives of
20 nonprofit agencies or civic groups; and no more than one shall
21 be an individual whose primary area of interest, experience,
22 or expertise is a major client group of a client services
23 group that is not represented on the council at the time of
24 appointment. Except for the member who is an elected public
25 official, each member of the statewide council ~~Human Rights~~
26 ~~Advocacy Committee~~ must have served as a member of a Florida
27 advocacy council, with priority consideration given to an
28 applicant who has served a full term on a local council
29 ~~district human rights advocacy committee.~~ Persons related to
30 each other by consanguinity or affinity within the third
31

1 degree may not serve on the statewide council ~~Human Rights~~
2 ~~Advocacy Committee~~ at the same time.

3 (2) Members of the statewide council ~~Human Rights~~
4 ~~Advocacy Committee~~ shall be appointed to serve terms of 4 ~~3~~
5 years. A member may not serve more than two full consecutive
6 terms. ~~The limitation on the number of terms a member may~~
7 ~~serve applies without regard to whether a term was served~~
8 ~~before or after October 1, 1989.~~

9 (3) If a member of the statewide council ~~Human Rights~~
10 ~~Advocacy Committee~~ fails to attend two-thirds of the regular
11 council ~~committee~~ meetings during the course of a year, the
12 position held by the ~~such~~ member may be deemed vacant by the
13 council ~~committee~~. The Governor shall fill the vacancy
14 pursuant to subsection (4). If a member of the statewide
15 council ~~violates~~ ~~Human Rights Advocacy Committee~~ ~~is in~~
16 ~~violation of the provisions of this section or procedures~~
17 ~~adopted under this section thereto~~, the council ~~committee~~ may
18 recommend to the Governor that the ~~such~~ member be removed.

19 (4) The Governor shall fill each vacancy on the
20 statewide council ~~Human Rights Advocacy Committee~~ from a list
21 of nominees submitted by the statewide council ~~committee~~. A
22 list of candidates may ~~shall~~ be submitted to the statewide
23 council ~~by the local council in the service area~~ ~~committee by~~
24 ~~the district human rights advocacy committee in the district~~
25 from which the vacancy occurs. Priority of consideration
26 shall be given to the appointment of an individual who is
27 receiving one or more client services and whose primary
28 interest, experience, or expertise lies with a major client
29 group that is ~~of the Department of Children and Family~~
30 ~~Services~~ not represented on the council ~~committee~~ at the time
31 of the appointment. If an appointment is not made within 60

1 days after a vacancy occurs on the statewide council
2 ~~committee~~, the vacancy may ~~shall~~ be filled by a majority vote
3 of the statewide council committee without further action by
4 the Governor. A ~~No~~ person who is employed by any state agency
5 in client ~~the Department of Children and Family~~ services may
6 not be appointed to the statewide council committee.

7 (5)(a) Members of the statewide council ~~Human Rights~~
8 ~~Advocacy Committee~~ shall receive no compensation, but are
9 ~~shall be~~ entitled to be reimbursed for per diem and travel
10 expenses in accordance with s. 112.061.

11 (b) The council committee shall select an executive
12 director who shall serve at the pleasure of the council
13 ~~committee~~ and shall perform the duties delegated to him or her
14 by the council committee. The compensation of the executive
15 director and staff shall be established in accordance with the
16 rules of the Selected Exempt Service.

17 (c) The council committee may apply for, receive, and
18 accept grants, gifts, donations, bequests, and other payments
19 including money or property, real or personal, tangible or
20 intangible, and service from any governmental or other public
21 or private entity or person and make arrangements as to the
22 use of same.

23 (d) The statewide council ~~Human Rights Advocacy~~
24 ~~Committee~~ shall annually prepare a budget request that is not
25 to be changed ~~shall not be subject to change~~ by department
26 staff after it is approved by the council committee, but ~~the~~
27 ~~budget request~~ shall be submitted to the Governor ~~by the~~
28 ~~department~~ for transmittal to the Legislature. The budget
29 shall include a request for funds to carry out the activities
30 of the statewide council and the local councils ~~Human Rights~~
31

1 ~~Advocacy Committee and the district human rights advocacy~~
2 ~~committees.~~

3 (6) The members of the statewide council ~~Human Rights~~
4 ~~Advocacy Committee~~ shall elect a chair and a vice chair to
5 terms ~~chairperson to a term~~ of 1 year. A person may not serve
6 as chair or vice chair ~~chairperson~~ for more than two full
7 consecutive terms.

8 (7) The responsibilities of the statewide council
9 ~~committee~~ include, but are not limited to:

10 (a) Serving as an independent third-party mechanism
11 for protecting the constitutional and human rights of clients
12 within programs or facilities ~~any client within a program or~~
13 ~~facility operated, funded, or contracted licensed, or~~
14 ~~regulated by any state agency that provides client the~~
15 ~~Department of Children and Family services.~~

16 (b) Monitoring by site visit and inspection of
17 records, the delivery and use of services, programs, or
18 facilities operated, funded, or contracted ~~regulated, or~~
19 ~~licensed by any state agency that provides client the~~
20 ~~Department of Children and Family services,~~ for the purpose of
21 preventing abuse or deprivation of the constitutional and
22 human rights of clients. The statewide council ~~Human Rights~~
23 ~~Advocacy Committee~~ may conduct an unannounced site visit or
24 monitoring visit that involves the inspection of records if
25 the ~~such~~ visit is conditioned upon a complaint. A complaint
26 may be generated by the council ~~committee~~ itself if
27 information from any state agency that provides client
28 services or from the Department of Children and Family
29 ~~Services~~ or other sources indicates a situation at the program
30 or facility that indicates possible abuse or neglect or
31 deprivation of the constitutional and human rights of clients.

1 The statewide council ~~Human Rights Advocacy Committee~~ shall
2 establish and follow uniform criteria for the review of
3 information and generation of complaints. Routine program
4 monitoring and reviews that do not require an examination of
5 records may be made unannounced.

6 (c) Receiving, investigating, and resolving reports of
7 abuse or deprivation of constitutional and human rights
8 referred to the statewide council by a local council ~~Human~~
9 ~~Rights Advocacy Committee~~ by a ~~district human rights advocacy~~
10 ~~committee~~. If a matter constitutes a threat to the life,
11 safety, or health of clients or is multidistrict in scope, the
12 statewide council ~~Human Rights Advocacy Committee~~ may exercise
13 such powers without the necessity of a referral from a local
14 council ~~district committee~~.

15 (d) Reviewing existing programs or services and new or
16 revised programs of the state agencies that provide client
17 ~~Department of Children and Family~~ services and making
18 recommendations as to how the rights of clients are affected.

19 (e) Submitting an annual report to the Legislature, no
20 later than December 30 of each calendar year, concerning
21 activities, recommendations, and complaints reviewed or
22 developed by the council ~~committee~~ during the year.

23 (f) Conducting meetings at least six times a year at
24 the call of the chair ~~chairperson~~ and at other times at the
25 call of the Governor or by written request of six members of
26 the council ~~committee~~.

27 (g) Developing and adopting uniform procedures to be
28 used to carry out the purpose and responsibilities of the
29 statewide council and the local councils ~~human rights advocacy~~
30 ~~committees~~, which procedures shall include, but need not be
31 limited to, the following:

- 1 1. The responsibilities of the statewide council and
2 the local councils ~~committee~~;
- 3 2. The organization and operation of the statewide
4 council and the local councils ~~committee and district~~
5 ~~committees~~, including procedures for replacing a member,
6 formats for maintaining records of council ~~committee~~
7 activities, and criteria for determining what constitutes a
8 conflict of interest for purposes of assigning and conducting
9 investigations and monitoring;
- 10 3. Uniform procedures for the statewide council and
11 the local councils relating to receiving and investigating
12 ~~committee and district committees to receive and investigate~~
13 reports of abuse or deprivation of constitutional or human
14 rights;
- 15 4. The responsibilities and relationship of the local
16 councils ~~district human rights advocacy committees~~ to the
17 statewide council ~~committee~~;
- 18 5. The relationship of the statewide council to the
19 state agencies that receive and investigate reports of abuse
20 and neglect of clients of state agencies ~~committee to the~~
21 ~~Department of Children and Family Services~~, including the way
22 in which reports of findings and recommendations related to
23 reported abuse or neglect are given to the appropriate state
24 agency that provides client ~~Department of Children and Family~~
25 services;
- 26 6. Provision for cooperation with the State Long-Term
27 Care Ombudsman Council;
- 28 7. Procedures for appeal. An appeal to the statewide
29 council ~~state committee~~ is made by a local council ~~district~~
30 ~~human rights advocacy committee~~ when a valid complaint is not
31 resolved at the local ~~district~~ level. The statewide council

1 ~~committee~~ may appeal an unresolved complaint to the secretary
2 or director of the appropriate state agency that provides
3 client of the Department of Children and Family services. If,
4 after exhausting all remedies, the statewide council ~~committee~~
5 is not satisfied that the complaint can be resolved within the
6 state agency ~~Department of Children and Family Services~~, the
7 appeal may be referred to the Governor ~~or the Legislature~~;

8 8. Uniform procedures for gaining access to and
9 maintaining confidential information; and

10 9. Definitions of misfeasance and malfeasance for
11 members of the statewide council and local councils ~~committee~~
12 ~~and district committees~~.

13 (h) Monitoring the performance and activities of all
14 local councils ~~district committees~~ and providing technical
15 assistance to members and staff of local councils ~~district~~
16 ~~committees~~.

17 (i) Providing for the development and presentation of
18 a standardized training program for members of local councils
19 ~~district committees~~.

20 (8)(a) In the performance of its duties, the statewide
21 council ~~Human Rights Advocacy Committee~~ shall have:

22 1. Authority to receive, investigate, seek to
23 conciliate, hold hearings on, and act on complaints that ~~which~~
24 allege any abuse or deprivation of constitutional or human
25 rights of persons who receive client services from any state
26 agency clients.

27 2. Access to all client records, files, and reports
28 from any program, service, or facility that is operated,
29 funded, or contracted licensed, or regulated by any state
30 agency that provides client ~~the Department of Children and~~
31 ~~Family~~ services and any records that ~~which~~ are material to its

1 investigation and ~~which~~ are in the custody of any other agency
2 or department of government. The council's ~~committee's~~
3 investigation or monitoring shall not impede or obstruct
4 matters under investigation by law enforcement agencies or
5 judicial authorities. Access shall not be granted if a
6 specific procedure or prohibition for reviewing records is
7 required by federal law and regulation that ~~which~~ supersedes
8 state law. Access shall not be granted to the records of a
9 private licensed practitioner who is providing services
10 outside the state agency, or outside a state facility,
11 ~~agencies and facilities~~ and whose client is competent and
12 refuses disclosure.

13 3. Standing to petition the circuit court for access
14 to client records that ~~which~~ are confidential as specified by
15 law. The petition shall state the specific reasons for which
16 the council ~~committee~~ is seeking access and the intended use
17 of such information. The court may authorize council
18 ~~committee~~ access to such records upon a finding that such
19 access is directly related to an investigation regarding the
20 possible deprivation of constitutional or human rights or the
21 abuse of a client. Original client files, records, and
22 reports shall not be removed from a state agency ~~the~~
23 ~~Department of Children and Family Services or agency~~
24 ~~facilities~~. Under no circumstance shall the council ~~committee~~
25 have access to confidential adoption records once the adoption
26 is finalized by a court in accordance with ~~the provisions of~~
27 ss. 39.0132, 63.022, and 63.162. Upon completion of a general
28 investigation of practices and procedures of a state agency,
29 the statewide council ~~the Department of Children and Family~~
30 ~~Services, the committee~~ shall report its findings to that
31 agency ~~department~~.

1 (b) All information obtained or produced by the
2 statewide council that ~~committee which~~ is made confidential by
3 law, that ~~which~~ relates to the identity of any client or group
4 of clients subject to the protections of this section, or that
5 ~~which~~ relates to the identity of an individual who provides
6 information to the council ~~committee~~ about abuse or about
7 alleged violations of constitutional or human rights, is
8 confidential and exempt from ~~the provisions of~~ s. 119.07(1)
9 and s. 24(a), Art. I of the State Constitution.

10 (c) Portions of meetings of the statewide council that
11 ~~Human Rights Advocacy Committee which~~ relate to the identity
12 of any client or group of clients subject to the protections
13 of this section, that ~~which~~ relate to the identity of an
14 individual who provides information to the council ~~committee~~
15 about abuse or about alleged violations of constitutional or
16 human rights, or wherein testimony is provided relating to
17 records otherwise made confidential by law, are exempt from
18 ~~the provisions of~~ s. 286.011 and s. 24(b), Art. I of the State
19 Constitution.

20 (d) All records prepared by members of the statewide
21 council that ~~committee which~~ reflect a mental impression,
22 investigative strategy, or theory are exempt from ~~the~~
23 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
24 Constitution until the investigation is completed or until the
25 investigation ceases to be active. For purposes of this
26 section, an investigation is considered "active" while such
27 investigation is being conducted by the statewide council
28 ~~committee~~ with a reasonable, good faith belief that it may
29 lead to a finding of abuse or of a violation of human rights.
30 An investigation does not cease to be active so long as the
31 statewide council ~~committee~~ is proceeding with reasonable

1 dispatch and there is a good faith belief that action may be
2 initiated by the council ~~committee~~ or other administrative or
3 law enforcement agency.

4 (e) Any person who knowingly and willfully discloses
5 any such confidential information commits ~~is guilty of~~ a
6 misdemeanor of the second degree, punishable as provided in s.
7 775.082 or s. 775.083.

8 Section 3. Section 402.166, Florida Statutes, is
9 amended to read:

10 402.166 Florida local advocacy councils ~~District human~~
11 ~~rights advocacy committees~~; confidential records and
12 meetings.--

13 (1) Each ~~At least one~~ district human rights advocacy
14 committee within ~~is created in~~ each service area ~~district~~ of
15 the Department of Children and Family Services is redesignated
16 as the Florida Local Advocacy Council. The local councils are
17 ~~district human rights advocacy committees~~ shall be subject to
18 direction from and the supervision of the statewide council
19 ~~Human Rights Advocacy Committee~~. The Department of Children
20 and Family Services ~~district administrator~~ shall assign staff
21 to provide administrative support to the local councils
22 ~~committees~~, and staff assigned to these positions shall
23 perform the functions required by the local councils ~~committee~~
24 without interference from the department. The local councils
25 ~~district committees~~ shall direct the activities of staff
26 assigned to them to the extent necessary for the local
27 councils ~~committees~~ to carry out their duties. The number and
28 areas of responsibility of the local councils ~~district human~~
29 ~~rights advocacy committees~~, not to exceed 46 councils
30 statewide ~~three in any district~~, shall be determined by the
31 statewide council and shall be consistent with judicial

1 boundaries. Local councils ~~majority vote of district committee~~
2 ~~members. However, district II may have four committees.~~
3 ~~District committees~~ shall meet at facilities under their
4 jurisdiction whenever possible.

5 (2) Each local council ~~district human rights advocacy~~
6 ~~committee~~ shall have no fewer than 7 members and no more than
7 15 members, no more than 4 ~~25 percent~~ of whom are or have been
8 recipients of one or more client ~~clients of the Department of~~
9 ~~Children and Family~~ services within the last 4 years, except
10 that one member of this group may be an immediate relative or
11 legal representative of a current or former client; two
12 providers, who deliver client services as defined in s.
13 402.164(2) ~~or programs to clients of the Department of~~
14 ~~Children and Family Services~~; and two representatives of
15 professional organizations, one of whom represents the
16 health-related professions and one of whom represents the
17 legal profession. Priority of consideration shall be given to
18 the appointment of at least one medical or osteopathic
19 physician, as defined in chapters 458 and 459, and one member
20 in good standing of The Florida Bar. Priority of consideration
21 shall also be given to the appointment of an individual who is
22 receiving client services and whose primary interest,
23 experience, or expertise lies with a major client group ~~of the~~
24 ~~Department of Children and Family Services~~ not represented on
25 the committee at the time of the appointment. ~~In no case~~
26 ~~shall~~ A person who is employed in client services by any state
27 agency may not be appointed to the council. No more than three
28 by the Department of Children and Family Services be selected
29 as a member of a committee. At no time shall individuals who
30 are providing contracted services for clients to any state
31 agency may serve on the same local council at the same time ~~to~~

1 ~~the Department of Children and Family Services constitute more~~
2 ~~than 25 percent of the membership of a district committee.~~
3 Persons related to each other by consanguinity or affinity
4 within the third degree may ~~shall~~ not serve on the same local
5 council ~~district human rights advocacy committee~~ at the same
6 time. All members of local councils ~~district human rights~~
7 ~~advocacy committees~~ must successfully complete a standardized
8 training course for council ~~committee~~ members within 3 months
9 after their appointment to a local council ~~committee~~. A
10 member may not be assigned to an investigation that ~~which~~
11 requires access to confidential information prior to the
12 completion of the training course. After he or she completes
13 the required training course, a member of a local council ~~may~~
14 ~~committee~~ ~~shall~~ not be prevented from participating in any
15 activity of that local council ~~committee~~, including
16 investigations and monitoring, except due to a conflict of
17 interest as described in the procedures established by the
18 statewide council ~~Human Rights Advocacy Committee~~ pursuant to
19 subsection (7).

20 (3)(a) With respect to existing local councils
21 ~~committees~~, each member shall serve a term of 4 years. Upon
22 expiration of a term and in the case of any other vacancy, the
23 local council ~~district committee~~ shall appoint a replacement
24 by majority vote of the local council ~~committee~~, subject to
25 the approval of the Governor. A member may serve no more than
26 two full consecutive terms.

27 (b)1. The Governor shall appoint the first four ~~4~~
28 members of any newly created local council ~~committee~~; and
29 those four ~~4~~ members shall select the remaining ~~11~~ members,
30 subject to approval of the Governor. If any of the first four
31 members are not appointed within 60 days after ~~of~~ a request is

1 ~~being~~ submitted to the Governor, those members may ~~shall~~ be
2 appointed by a majority vote of the statewide council ~~district~~
3 ~~committee~~ without further action by the Governor.

4 2. Members shall serve for no more than two full
5 consecutive terms of 4 ~~3~~ years, except that at the time of
6 initial appointment, terms shall be staggered so that
7 approximately one-half of the members first ~~the first six~~
8 ~~members~~ appointed shall serve for terms of 4 ~~2~~ years and the
9 remaining ~~five~~ members shall serve for terms of 2 ~~3~~ years.
10 Vacancies shall be filled as provided in subparagraph 1.

11 (c) If no action is taken by the Governor to approve
12 or disapprove a replacement of a member pursuant to this
13 subsection ~~paragraph~~ within 30 days after the local council
14 ~~district committee~~ has notified the Governor of the
15 appointment, then the appointment of the replacement may ~~shall~~
16 be considered approved by the statewide council.

17 ~~(d) The limitation on the number of terms a member may~~
18 ~~serve applies without regard to whether a term was served~~
19 ~~before or after October 1, 1989.~~

20 (4) Each local council ~~committee~~ shall elect a chair
21 and a vice chair ~~chairperson~~ for a term of 1 year. A person
22 may not serve as chair or vice chair ~~chairperson~~ for more than
23 two consecutive terms. The chair's and vice chair's terms
24 expire on September 30 of each year ~~chairperson's term expires~~
25 ~~on the anniversary of the chairperson's election.~~

26 (5) If a local council ~~In the event that a committee~~
27 member fails to attend two-thirds of the regular council
28 ~~committee~~ meetings during the course of a year, the local
29 council may ~~it shall be the responsibility of the committee to~~
30 replace the ~~such~~ member. If a member of a local council
31 violates this section ~~district committee member is in~~

1 ~~violation of the provisions of this subsection~~ or procedures
2 adopted under this section, the local council thereto, a
3 ~~district committee~~ may recommend to the Governor that the such
4 member be removed.

5 (6) A member of a local council ~~district committee~~
6 shall receive no compensation but ~~is~~ shall receive per diem
7 ~~and shall be~~ entitled to be reimbursed for per diem and travel
8 expenses as provided in s. 112.061. Members may be provided
9 reimbursement for long-distance telephone calls if such calls
10 were necessary to an investigation of an abuse or deprivation
11 of constitutional or human rights.

12 (7) A local council ~~district human rights advocacy~~
13 ~~committee~~ shall first seek to resolve a complaint with the
14 appropriate local administration, agency, or program; any
15 matter not resolved by the local council ~~district committee~~
16 shall be referred to the statewide council Human Rights
17 ~~Advocacy Committee~~. A local council ~~district human rights~~
18 ~~advocacy committee~~ shall comply with appeal procedures
19 established by the statewide council Human Rights Advocacy
20 ~~Committee~~. The duties, actions, and procedures of both new
21 and existing local councils ~~district human rights advocacy~~
22 ~~committees~~ shall conform to ss. 402.164-402.167 ~~the provisions~~
23 ~~of this act~~. The duties of each local council ~~district human~~
24 ~~rights advocacy committee~~ shall include, but are not limited
25 to:

26 (a) Serving as an independent third-party mechanism
27 for protecting the constitutional and human rights of any
28 client within a program or facility operated, funded, or
29 contracted licensed, or regulated by a state agency providing
30 client ~~the Department of Children and Family services~~.

31

1 (b) Monitoring by site visit and inspection of
2 records, ~~the delivery and use of services, programs, or~~
3 facilities operated, funded, or contracted ~~regulated or~~
4 ~~licensed by a state agency that provides client~~ the Department
5 ~~of Children and Family services,~~ for the purpose of preventing
6 abuse or deprivation of the constitutional and human rights of
7 clients. A local council ~~district human rights advocacy~~
8 ~~committee~~ may conduct an unannounced site visit or monitoring
9 visit that involves the inspection of records if the ~~such~~
10 visit is conditioned upon a complaint. A complaint may be
11 generated by the council ~~committee~~ itself if information from
12 a state agency that provides client ~~the Department of Children~~
13 ~~and Family services or~~ from other sources indicates a
14 situation at the program or facility that indicates possible
15 abuse or neglect or deprivation of constitutional and human
16 rights of clients. The local council ~~district human rights~~
17 ~~advocacy committees~~ shall follow uniform criteria established
18 by the statewide council ~~Human Rights Advocacy Committee~~ for
19 the review of information and generation of complaints.
20 Routine program monitoring and reviews that do not require an
21 examination of records may be made unannounced.

22 (c) Receiving, investigating, and resolving reports of
23 abuse or deprivation of constitutional and human rights.

24 (d) Reviewing and making recommendations regarding how
25 a client's constitutional or human rights might be affected by
26 the client's participation in a proposed research project,
27 prior to implementation of the project ~~recommendation with~~
28 ~~respect to the involvement by clients of the Department of~~
29 ~~Children and Family Services as subjects for research~~
30 ~~projects, prior to implementation, insofar as their human~~
31 ~~rights are affected.~~

1 (e) Reviewing existing programs ~~or services~~ and
2 proposed new or revised programs of client ~~the Department of~~
3 ~~Children and Family~~ services and making recommendations as to
4 how these programs and services affect or might affect the
5 constitutional or human rights of clients ~~are affected~~.

6 (f) Appealing to the statewide council ~~state committee~~
7 any complaint unresolved at the local ~~district~~ level. Any
8 matter that constitutes a threat to the life, safety, or
9 health of a client or is multidistrict in scope shall
10 automatically be referred to the statewide council ~~Human~~
11 ~~Rights Advocacy Committee~~.

12 (g) Submitting an annual report by September 30 to the
13 statewide council ~~Human Rights Advocacy Committee~~ concerning
14 activities, recommendations, and complaints reviewed or
15 developed by the council ~~committee~~ during the year.

16 (h) Conducting meetings at least six times a year at
17 the call of the chair ~~chairperson~~ and at other times at the
18 call of the Governor, at the call of the statewide council
19 ~~Human Rights Advocacy Committee~~, or by written request of a
20 majority of the members of the council ~~committee~~.

21 (8)(a) In the performance of its duties, a local
22 council ~~district human rights advocacy committee~~ shall have:

23 1. Access to all client records, files, and reports
24 from any program, service, or facility that is operated,
25 funded, or contracted licensed, or regulated by any state
26 agency that provides client ~~the Department of Children and~~
27 ~~Family~~ services and any records that ~~which~~ are material to its
28 investigation and ~~which~~ are in the custody of any other agency
29 or department of government. The council's ~~committee's~~
30 investigation or monitoring shall not impede or obstruct
31 matters under investigation by law enforcement agencies or

1 judicial authorities. Access shall not be granted if a
2 specific procedure or prohibition for reviewing records is
3 required by federal law and regulation that ~~which~~ supersedes
4 state law. Access shall not be granted to the records of a
5 private licensed practitioner who is providing services
6 outside state agencies and facilities and whose client is
7 competent and refuses disclosure.

8 2. Standing to petition the circuit court for access
9 to client records that ~~which~~ are confidential as specified by
10 law. The petition shall state the specific reasons for which
11 the council committee is seeking access and the intended use
12 of such information. The court may authorize ~~committee~~ access
13 to such records upon a finding that such access is directly
14 related to an investigation regarding the possible deprivation
15 of constitutional or human rights or the abuse of a client.
16 Original client files, records, and reports shall not be
17 removed from a state agency ~~Department of Children and Family~~
18 ~~Services or agency facilities~~. Upon no circumstances shall
19 the council committee have access to confidential adoption
20 records once the adoption is finalized in court in accordance
21 with ~~the provisions of~~ ss. 39.0132, 63.022, and 63.162. Upon
22 completion of a general investigation of practices and
23 procedures followed by a state agency in providing client ~~of~~
24 ~~the Department of Children and Family~~ services, the council
25 ~~committee~~ shall report its findings to the appropriate state
26 agency that department.

27 (b) All information obtained or produced by a local
28 council that the committee ~~which~~ is made confidential by law,
29 that ~~which~~ relates to the identity of any client or group of
30 clients subject to the protection of this section, or that
31 ~~which~~ relates to the identity of an individual who provides

1 information to the council ~~committee~~ about abuse or about
2 alleged violations of constitutional or human rights, is
3 confidential and exempt from ~~the provisions of~~ s. 119.07(1)
4 and s. 24(a), Art. I of the State Constitution.

5 (c) Portions of meetings of a local council that
6 ~~district human rights advocacy committee which~~ relate to the
7 identity of any client or group of clients subject to the
8 protections of this section, that ~~which~~ relate to the identity
9 of an individual who provides information to the council
10 ~~committee~~ about abuse or about alleged violations of
11 constitutional or human rights, or wherein testimony is
12 provided relating to records otherwise made confidential by
13 law, are exempt from ~~the provisions of~~ s. 286.011 and s.
14 24(b), Art. I of the State Constitution.

15 (d) All records prepared by members of a local council
16 that ~~the committee which~~ reflect a mental impression,
17 investigative strategy, or theory are exempt from ~~the~~
18 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
19 Constitution until the investigation is completed or until the
20 investigation ceases to be active. For purposes of this
21 section, an investigation is considered "active" while such
22 investigation is being conducted by a local council ~~the~~
23 ~~committee~~ with a reasonable, good faith belief that it may
24 lead to a finding of abuse or of a violation of constitutional
25 or human rights. An investigation does not cease to be active
26 so long as the council ~~committee~~ is proceeding with reasonable
27 dispatch and there is a good faith belief that action may be
28 initiated by the council ~~committee~~ or other administrative or
29 law enforcement agency.

30 (e) Any person who knowingly and willfully discloses
31 any such confidential information commits ~~is guilty of a~~

1 misdemeanor of the second degree, punishable as provided in s.
2 775.082 or s. 775.083.

3 Section 4. Section 402.167, Florida Statutes, is
4 amended to read:

5 402.167 Duties of state agencies that provide client
6 services relating to the Florida Statewide Advocacy Council
7 and the Florida local advocacy councils ~~Department duties~~
8 ~~relating to the Statewide Human Rights Advocacy Committee and~~
9 ~~the District Human Rights Advocacy Committees.--~~

10 (1) Each state agency that provides client ~~The~~
11 ~~Department of Children and Family~~ services shall adopt rules
12 that ~~which~~ are consistent with law, amended to reflect any
13 statutory changes, and that ~~which rules~~ address at least the
14 following:

15 (a) Procedures by which ~~Department of Children and~~
16 ~~Family Services~~ district staff of state agencies refer reports
17 of abuse of clients to the Florida local advocacy councils
18 ~~district human rights advocacy committees.~~

19 (b) Procedures by which client information is made
20 available to members of the Florida Statewide Advocacy Council
21 and the Florida local advocacy councils ~~Human Rights Advocacy~~
22 ~~Committee and the district human rights advocacy committees.~~

23 (c) Procedures by which recommendations made by the
24 statewide and local councils ~~human rights advocacy committees~~
25 will be incorporated into ~~Department of Children and Family~~
26 ~~Services~~ policies and procedures of the state agencies.

27 ~~(d) Procedures by which committee members are~~
28 ~~reimbursed for authorized expenditures.~~

29 (2) The Department of Children and Family Services
30 shall provide for the location of local councils in area
31 ~~district human rights advocacy committees in district~~

1 ~~headquarters~~ offices and shall provide necessary equipment and
2 office supplies, including, but not limited to, clerical and
3 word processing services, photocopiers, telephone services,
4 and stationery and other necessary supplies, and shall
5 establish the procedures by which council members are
6 reimbursed for authorized expenditures.

7 (3) The secretaries or directors of the state agencies
8 ~~secretary~~ shall ensure the full cooperation and assistance of
9 employees of their respective state agencies ~~the Department of~~
10 ~~Children and Family Services~~ with members and staff of the
11 statewide and local councils ~~human rights advocacy committees.~~
12 Further, the Secretary of Children and Family Services shall
13 ensure that, to the extent possible, staff assigned to the
14 statewide council and local councils ~~Human Rights Advocacy~~
15 ~~Committees and District Human Rights Advocacy Committees~~ are
16 free of interference from or control by the department in
17 performing their duties relative to those councils ~~committees.~~

18 Section 5. Paragraph (a) of subsection (7) of section
19 39.001, Florida Statutes, is amended to read:

20 39.001 Purposes and intent; personnel standards and
21 screening.--

22 (7) PLAN FOR COMPREHENSIVE APPROACH.--

23 (a) The department shall develop a state plan for the
24 prevention of abuse, abandonment, and neglect of children and
25 shall submit the plan to the Speaker of the House of
26 Representatives, the President of the Senate, and the Governor
27 no later than January 1, 1983. The Department of Education and
28 the Division of Children's Medical Services of the Department
29 of Health shall participate and fully cooperate in the
30 development of the state plan at both the state and local
31 levels. Furthermore, appropriate local agencies and

1 organizations shall be provided an opportunity to participate
2 in the development of the state plan at the local level.
3 Appropriate local groups and organizations shall include, but
4 not be limited to, community mental health centers; guardian
5 ad litem programs for children under the circuit court; the
6 school boards of the local school districts; the Florida local
7 advocacy councils ~~the district human rights advocacy~~
8 ~~committees~~; private or public organizations or programs with
9 recognized expertise in working with children who are sexually
10 abused, physically abused, emotionally abused, abandoned, or
11 neglected and with expertise in working with the families of
12 such children; private or public programs or organizations
13 with expertise in maternal and infant health care;
14 multidisciplinary child protection teams; child day care
15 centers; law enforcement agencies, and the circuit courts,
16 when guardian ad litem programs are not available in the local
17 area. The state plan to be provided to the Legislature and
18 the Governor shall include, as a minimum, the information
19 required of the various groups in paragraph (b).

20 Section 6. Paragraph (k) of subsection (2) of section
21 39.202, Florida Statutes, is amended to read:

22 39.202 Confidentiality of reports and records in cases
23 of child abuse or neglect.--

24 (2) Access to such records, excluding the name of the
25 reporter which shall be released only as provided in
26 subsection (4), shall be granted only to the following
27 persons, officials, and agencies:

28 (k) Any appropriate official of a Florida advocacy
29 council ~~the human rights advocacy committee~~ investigating a
30 report of known or suspected child abuse, abandonment, or
31 neglect, the Auditor General for the purpose of conducting

1 preliminary or compliance reviews pursuant to s. 11.45, or the
2 guardian ad litem for the child.

3 Section 7. Subsection (4) of section 39.302, Florida
4 Statutes, is amended to read:

5 39.302 Protective investigations of institutional
6 child abuse, abandonment, or neglect.--

7 (4) The department shall notify the Florida local
8 advocacy council ~~human rights advocacy committee~~ in the
9 appropriate district of the department as to every report of
10 institutional child abuse, abandonment, or neglect in the
11 district in which a client of the department is alleged or
12 shown to have been abused, abandoned, or neglected, which
13 notification shall be made within 48 hours after the
14 department commences its investigation.

15 Section 8. Paragraphs (g) and (i) of subsection (4)
16 and subsection (7) of section 393.13, Florida Statutes, are
17 amended to read:

18 393.13 Personal treatment of persons who are
19 developmentally disabled.--

20 (4) CLIENT RIGHTS.--For purposes of this subsection,
21 the term "client," as defined in s. 393.063, shall also
22 include any person served in a facility licensed pursuant to
23 s. 393.067.

24 (g) No client shall be subjected to a treatment
25 program to eliminate bizarre or unusual behaviors without
26 first being examined by a physician who in his or her best
27 judgment determines that such behaviors are not organically
28 caused.

29 1. Treatment programs involving the use of noxious or
30 painful stimuli shall be prohibited.

31

1 2. All alleged violations of this paragraph shall be
2 reported immediately to the chief administrative officer of
3 the facility or the district administrator, the department
4 head, and the Florida local advocacy council ~~district human~~
5 ~~rights advocacy committee~~. A thorough investigation of each
6 incident shall be conducted and a written report of the
7 finding and results of such investigation shall be submitted
8 to the chief administrative officer of the facility or the
9 district administrator and to the department head within 24
10 hours of the occurrence or discovery of the incident.

11 3. The department shall promulgate by rule a system
12 for the oversight of behavioral programs. Such system shall
13 establish guidelines and procedures governing the design,
14 approval, implementation, and monitoring of all behavioral
15 programs involving clients. The system shall ensure statewide
16 and local review by committees of professionals certified as
17 behavior analysts pursuant to s. 393.17. No behavioral
18 program shall be implemented unless reviewed according to the
19 rules established by the department under this section.
20 Nothing stated in this section shall prohibit the review of
21 programs by the Florida statewide or local advocacy councils
22 ~~district human rights advocacy committee~~.

23 (i) Clients shall have the right to be free from
24 unnecessary physical, chemical, or mechanical restraint.
25 Restraints shall be employed only in emergencies or to protect
26 the client from imminent injury to himself or herself or
27 others. Restraints shall not be employed as punishment, for
28 the convenience of staff, or as a substitute for a
29 habilitative plan. Restraints shall impose the least possible
30 restrictions consistent with their purpose and shall be
31 removed when the emergency ends. Restraints shall not cause

1 physical injury to the client and shall be designed to allow
2 the greatest possible comfort.

3 1. Mechanical supports used in normative situations to
4 achieve proper body position and balance shall not be
5 considered restraints, but shall be prescriptively designed
6 and applied under the supervision of a qualified professional
7 with concern for principles of good body alignment,
8 circulation, and allowance for change of position.

9 2. Totally enclosed cribs and barred enclosures shall
10 be considered restraints.

11 3. Daily reports on the employment of physical,
12 chemical, or mechanical restraints by those specialists
13 authorized in the use of such restraints shall be made to the
14 appropriate chief administrator of the facility, and a monthly
15 summary of such reports shall be relayed to the district
16 administrator and the Florida local advocacy council ~~district~~
17 ~~human rights advocacy committee~~. The reports shall summarize
18 all such cases of restraints, the type used, the duration of
19 usage, and the reasons therefor. Districts shall submit
20 districtwide quarterly reports of these summaries to the state
21 Developmental Services Program Office.

22 4. The department shall post a copy of the rules
23 promulgated under this section in each living unit of
24 residential facilities. A copy of the rules promulgated under
25 this section shall be given to all staff members of licensed
26 facilities and made a part of all preservice and inservice
27 training programs.

28 (7) RESIDENT GOVERNMENT.--Each residential facility
29 providing services to clients who are desirous and capable of
30 participating shall initiate and develop a program of resident
31 government to hear the views and represent the interests of

1 all clients served by the facility. The resident government
2 shall be composed of residents elected by other residents,
3 staff advisers skilled in the administration of community
4 organizations, and a representative of the Florida local
5 advocacy council ~~district human rights advocacy committee~~. The
6 resident government shall work closely with the Florida local
7 advocacy council ~~district human rights advocacy committee~~ and
8 the district administrator to promote the interests and
9 welfare of all residents in the facility.

10 Section 9. Paragraph (c) of subsection (5) and
11 subsection (12) of section 394.459, Florida Statutes, are
12 amended to read:

13 394.459 Rights of patients.--

14 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

15 (c) Each facility must permit immediate access to any
16 patient, subject to the patient's right to deny or withdraw
17 consent at any time, by the patient's family members,
18 guardian, guardian advocate, representative, Florida statewide
19 or local advocacy council ~~human rights advocacy committee~~, or
20 attorney, unless such access would be detrimental to the
21 patient. If a patient's right to communicate or to receive
22 visitors is restricted by the facility, written notice of such
23 restriction and the reasons for the restriction shall be
24 served on the patient, the patient's attorney, and the
25 patient's guardian, guardian advocate, or representative; and
26 such restriction shall be recorded on the patient's clinical
27 record with the reasons therefor. The restriction of a
28 patient's right to communicate or to receive visitors shall be
29 reviewed at least every 7 days. The right to communicate or
30 receive visitors shall not be restricted as a means of

31

1 punishment. Nothing in this paragraph shall be construed to
2 limit the provisions of paragraph (d).

3 (12) POSTING OF NOTICE OF RIGHTS OF PATIENTS.--Each
4 facility shall post a notice listing and describing, in the
5 language and terminology that the persons to whom the notice
6 is addressed can understand, the rights provided in this
7 section. This notice shall include a statement that
8 provisions of the federal Americans with Disabilities Act
9 apply and the name and telephone number of a person to contact
10 for further information. This notice shall be posted in a
11 place readily accessible to patients and in a format easily
12 seen by patients. This notice shall include the telephone
13 numbers of the Florida local advocacy council ~~local human~~
14 ~~rights advocacy committee~~ and Advocacy Center for Persons with
15 Disabilities, Inc.

16 Section 10. Section 394.4595, Florida Statutes, is
17 amended to read:

18 394.4595 Florida statewide and local advocacy
19 councils;~~Human Rights Advocacy Committee~~ access to patients
20 and records.--Any facility designated by the department as a
21 receiving or treatment facility must allow access to any
22 patient and the clinical and legal records of any patient
23 admitted pursuant to the provisions of this act by members of
24 the Florida statewide and local advocacy councils ~~Human Rights~~
25 ~~Advocacy Committee~~.

26 Section 11. Paragraph (d) of subsection (2) of section
27 394.4597, Florida Statutes, is amended to read:

28 394.4597 Persons to be notified; patient's
29 representative.--

30 (2) INVOLUNTARY PATIENTS.--

31

1 (d) When the receiving or treatment facility selects a
2 representative, first preference shall be given to a health
3 care surrogate, if one has been previously selected by the
4 patient. If the patient has not previously selected a health
5 care surrogate, the selection, except for good cause
6 documented in the patient's clinical record, shall be made
7 from the following list in the order of listing:

- 8 1. The patient's spouse.
- 9 2. An adult child of the patient.
- 10 3. A parent of the patient.
- 11 4. The adult next of kin of the patient.
- 12 5. An adult friend of the patient.
- 13 6. The appropriate Florida local advocacy council
14 ~~human rights advocacy committee~~ as provided in s. 402.166.

15 Section 12. Subsection (1) of section 394.4598,
16 Florida Statutes, is amended to read:

17 394.4598 Guardian advocate.--

18 (1) The administrator may petition the court for the
19 appointment of a guardian advocate based upon the opinion of a
20 psychiatrist that the patient is incompetent to consent to
21 treatment. If the court finds that a patient is incompetent to
22 consent to treatment and has not been adjudicated
23 incapacitated and a guardian with the authority to consent to
24 mental health treatment appointed, it shall appoint a guardian
25 advocate. The patient has the right to have an attorney
26 represent him or her at the hearing. If the person is
27 indigent, the court shall appoint the office of the public
28 defender to represent him or her at the hearing. The patient
29 has the right to testify, cross-examine witnesses, and present
30 witnesses. The proceeding shall be recorded either
31 electronically or stenographically, and testimony shall be

1 provided under oath. One of the professionals authorized to
2 give an opinion in support of a petition for involuntary
3 placement, as described in s. 394.467(2), must testify. A
4 guardian advocate must meet the qualifications of a guardian
5 contained in part IV of chapter 744, except that a
6 professional referred to in this part, an employee of the
7 facility providing direct services to the patient under this
8 part, a departmental employee, a facility administrator, or
9 member of the Florida local advocacy council ~~district human~~
10 ~~rights advocacy committee~~ shall not be appointed. A person who
11 is appointed as a guardian advocate must agree to the
12 appointment.

13 Section 13. Paragraph (b) of subsection (2) of section
14 394.4599, Florida Statutes, is amended to read:

15 394.4599 Notice.--

16 (2) INVOLUNTARY PATIENTS.--

17 (b) A receiving facility shall give prompt notice of
18 the whereabouts of a patient who is being involuntarily held
19 for examination, by telephone or in person within 24 hours
20 after the patient's arrival at the facility, unless the
21 patient requests that no notification be made. Contact
22 attempts shall be documented in the patient's clinical record
23 and shall begin as soon as reasonably possible after the
24 patient's arrival. Notice that a patient is being admitted as
25 an involuntary patient shall be given to the Florida local
26 advocacy council ~~local human rights advocacy committee~~ no
27 later than the next working day after the patient is admitted.

28 Section 14. Subsection (5) of section 394.4615,
29 Florida Statutes, is amended to read:

30 394.4615 Clinical records; confidentiality.--

31

1 (5) Information from clinical records may be used by
2 the Agency for Health Care Administration, the department, and
3 the Florida advocacy councils ~~human rights advocacy committees~~
4 for the purpose of monitoring facility activity and complaints
5 concerning facilities.

6 Section 15. Paragraph (g) of subsection (2) of section
7 400.0067, Florida Statutes, is amended to read:

8 400.0067 Establishment of State Long-Term Care
9 Ombudsman Council; duties; membership.--

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

11 (g) Enter into a cooperative agreement with the
12 Florida statewide and local advocacy councils ~~district human~~
13 ~~rights advocacy committees~~ for the purpose of coordinating
14 advocacy services provided to residents of long-term care
15 facilities.

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

18 400.0089 Agency reports.--The State Long-Term Care
19 Ombudsman Council, shall, in cooperation with the Department
20 of Elderly Affairs, maintain a statewide uniform reporting
21 system to collect and analyze data relating to complaints and
22 conditions in long-term care facilities and to residents, for
23 the purpose of identifying and resolving significant problems.
24 The council shall submit such data as part of its annual
25 report required pursuant to s. 400.0067(2)(h) to the Agency
26 for Health Care Administration, the Department of Children and
27 Family Services, the Florida Statewide Advocacy Council
28 ~~Statewide Human Rights Advocacy Committee~~, the Advocacy Center
29 for Persons with Disabilities, the Commissioner for the United
30 States Administration on Aging, the National Ombudsman
31

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

3 Section 17. Paragraph (a) of subsection (2) of section
4 400.118, Florida Statutes, is amended to read:

5 400.118 Quality assurance; early warning system;
6 monitoring; rapid response teams.--

7 (2)(a) The agency shall establish within each district
8 office one or more quality-of-care monitors, based on the
9 number of nursing facilities in the district, to monitor all
10 nursing facilities in the district on a regular, unannounced,
11 aperiodic basis, including nights, evenings, weekends, and
12 holidays. Priority for monitoring visits shall be given to
13 nursing facilities with a history of patient care
14 deficiencies. Quality-of-care monitors shall be registered
15 nurses who are trained and experienced in nursing facility
16 regulation, standards of practice in long-term care, and
17 evaluation of patient care. Individuals in these positions
18 shall not be deployed by the agency as a part of the district
19 survey team in the conduct of routine, scheduled surveys, but
20 shall function solely and independently as quality-of-care
21 monitors. Quality-of-care monitors shall assess the overall
22 quality of life in the nursing facility and shall assess
23 specific conditions in the facility directly related to
24 patient care. The quality-of-care monitor shall include in an
25 assessment visit observation of the care and services rendered
26 to residents and formal and informal interviews with
27 residents, family members, facility staff, resident guests,
28 volunteers, other regulatory staff, and representatives of a
29 long-term care ombudsman council or Florida advocacy council
30 ~~human rights advocacy committee~~.

31

1 Section 18. Subsection (13) of section 400.141,
2 Florida Statutes, is amended to read:

3 400.141 Administration and management of nursing home
4 facilities.--Every licensed facility shall comply with all
5 applicable standards and rules of the agency and shall:

6 (13) Publicly display a poster provided by the agency
7 containing the names, addresses, and telephone numbers for the
8 state's abuse hotline, the State Long-Term Care Ombudsman, the
9 Agency for Health Care Administration consumer hotline, the
10 Advocacy Center for Persons with Disabilities, the Florida
11 Statewide Advocacy Council ~~Statewide Human Rights Advocacy~~
12 ~~Committee~~, and the Medicaid Fraud Control Unit, with a clear
13 description of the assistance to be expected from each.

14
15 Facilities that have been awarded a Gold Seal under the
16 program established in s. 400.235 may develop a plan to
17 provide certified nursing assistant training as prescribed by
18 federal regulations and state rules and may apply to the
19 agency for approval of its program.

20 Section 19. Subsection (13) of section 400.419,
21 Florida Statutes, is amended to read:

22 400.419 Violations; administrative fines.--

23 (13) The agency shall develop and disseminate an
24 annual list of all facilities sanctioned or fined \$5,000 or
25 more for violations of state standards, the number and class
26 of violations involved, the penalties imposed, and the current
27 status of cases. The list shall be disseminated, at no charge,
28 to the Department of Elderly Affairs, the Department of
29 Health, the Department of Children and Family Services, the
30 area agencies on aging, the Florida Statewide Advocacy Council
31 ~~Statewide Human Rights Advocacy Committee~~, and the state and

1 district nursing home ombudsman councils. The Department of
2 Children and Family Services shall disseminate the list to
3 service providers under contract to the department who are
4 responsible for referring persons to a facility for residency.
5 The agency may charge a fee commensurate with the cost of
6 printing and postage to other interested parties requesting a
7 copy of this list.

8 Section 20. Subsection (2) of section 400.428, Florida
9 Statutes, is amended to read:

10 400.428 Resident bill of rights.--

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

25 Section 21. Paragraph (a) of subsection (1) of section
26 415.1034, Florida Statutes, is amended to read:

27 415.1034 Mandatory reporting of abuse, neglect, or
28 exploitation of disabled adults or elderly persons; mandatory
29 reports of death.--

30 (1) MANDATORY REPORTING.--

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

1 1. Physician, osteopathic physician, medical examiner,
2 chiropractic physician, nurse, or hospital personnel engaged
3 in the admission, examination, care, or treatment of disabled
4 adults or elderly persons;

5 2. Health professional or mental health professional
6 other than one listed in subparagraph 1.;

7 3. Practitioner who relies solely on spiritual means
8 for healing;

9 4. Nursing home staff; assisted living facility staff;
10 adult day care center staff; adult family-care home staff;
11 social worker; or other professional adult care, residential,
12 or institutional staff;

13 5. State, county, or municipal criminal justice
14 employee or law enforcement officer;

15 6. Florida advocacy council member ~~Human rights~~
16 ~~advocacy committee~~ or long-term care ombudsman council member;
17 or

18 7. Bank, savings and loan, or credit union officer,
19 trustee, or employee,

20
21 who knows, or has reasonable cause to suspect, that a disabled
22 adult or an elderly person has been or is being abused,
23 neglected, or exploited shall immediately report such
24 knowledge or suspicion to the central abuse registry and
25 tracking system on the single statewide toll-free telephone
26 number.

27 Section 22. Subsection (1) of section 415.104, Florida
28 Statutes, is amended to read:

29 415.104 Protective services investigations of cases of
30 abuse, neglect, or exploitation of aged persons or disabled
31 adults; transmittal of records to state attorney.--

1 (1) The department shall, upon receipt of a report
2 alleging abuse, neglect, or exploitation of an aged person or
3 disabled adult, commence, or cause to be commenced within 24
4 hours, a protective services investigation of the facts
5 alleged therein. If, upon arrival of the protective
6 investigator at the scene of the incident, a caregiver refuses
7 to allow the department to begin a protective services
8 investigation or interferes with the department's ability to
9 conduct such an investigation, the appropriate law enforcement
10 agency shall be contacted to assist the department in
11 commencing the protective services investigation. If, during
12 the course of the investigation, the department has reason to
13 believe that the abuse, neglect, or exploitation is
14 perpetrated by a second party, the appropriate criminal
15 justice agency and state attorney shall be orally notified in
16 order that such agencies may begin a criminal investigation
17 concurrent with the protective services investigation of the
18 department. In an institutional investigation, the alleged
19 perpetrator may be represented by an attorney, at his or her
20 own expense, or accompanied by another person, if the person
21 or the attorney executes an affidavit of understanding with
22 the department and agrees to comply with the confidentiality
23 provisions of s. 415.107. The absence of an attorney or other
24 person does not prevent the department from proceeding with
25 other aspects of the investigation, including interviews with
26 other persons. The department shall make a preliminary
27 written report to the criminal justice agencies within 5
28 working days after the oral report. The department shall,
29 within 24 hours after receipt of the report, notify the
30 appropriate Florida local advocacy council ~~human rights~~
31 ~~advocacy committee~~, or long-term care ombudsman council, when

1 appropriate, that an alleged abuse, neglect, or exploitation
2 perpetrated by a second party has occurred. Notice to the
3 Florida local advocacy council ~~human rights advocacy committee~~
4 or long-term care ombudsman council may be accomplished orally
5 or in writing and shall include the name and location of the
6 aged person or disabled adult alleged to have been abused,
7 neglected, or exploited and the nature of the report. For
8 each report it receives, the department shall perform an
9 onsite investigation to:

10 (a) Determine that the person is an aged person or
11 disabled adult as defined in s. 415.102.

12 (b) Determine the composition of the family or
13 household, including the name, address, date of birth, social
14 security number, sex, and race of each aged person or disabled
15 adult named in the report; any others in the household or in
16 the care of the caregiver, or any other persons responsible
17 for the aged person's or disabled adult's welfare; and any
18 other adults in the same household.

19 (c) Determine whether there is an indication that any
20 aged person or disabled adult is abused, neglected, or
21 exploited, including a determination of harm or threatened
22 harm to any aged person or disabled adult; the nature and
23 extent of present or prior injuries, abuse, or neglect, and
24 any evidence thereof; and a determination as to the person or
25 persons apparently responsible for the abuse, neglect, or
26 exploitation, including the name, address, date of birth,
27 social security number, sex, and race of each person to be
28 classified as an alleged perpetrator in a proposed confirmed
29 report. An alleged perpetrator named in a proposed confirmed
30 report of abuse, neglect, or exploitation shall cooperate in
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1 the provision of the required data for the central abuse
2 registry and tracking system to the fullest extent possible.

3 (d) Determine the immediate and long-term risk to each
4 aged person or disabled adult through utilization of
5 standardized risk assessment instruments.

6 (e) Determine the protective, treatment, and
7 ameliorative services necessary to safeguard and ensure the
8 aged person's or disabled adult's well-being and cause the
9 delivery of those services through the early intervention of
10 the departmental worker responsible for service provision and
11 management of identified services.

12 Section 23. Paragraphs (a) and (i) of subsection (1)
13 of section 415.1055, Florida Statutes, are amended to read:

14 415.1055 Notification to administrative entities,
15 subjects, and reporters; notification to law enforcement and
16 state attorneys.--

17 (1) NOTIFICATION TO ADMINISTRATIVE ENTITIES.--

18 (a) The department shall, within 24 hours after
19 receipt of a report of abuse, neglect, or exploitation of a
20 disabled adult or an elderly person within a facility,
21 excluding Saturdays, Sundays, and legal holidays, notify the
22 appropriate Florida local advocacy council ~~human rights~~
23 ~~advocacy committee~~ and the long-term care ombudsman council,
24 in writing, that the department has reasonable cause to
25 believe that a disabled adult or an elderly person has been
26 abused, neglected, or exploited at the facility.

27 (i) At the conclusion of a protective investigation at
28 a facility, the department shall notify either the Florida
29 local advocacy council ~~human rights advocacy committee~~ or
30 long-term care ombudsman council of the results of the
31 investigation. This notification must be in writing.

1 Section 24. Subsection (2) of section 415.106, Florida
2 Statutes, is amended to read:

3 415.106 Cooperation by the department and criminal
4 justice and other agencies.--

5 (2) To ensure coordination, communication, and
6 cooperation with the investigation of abuse, neglect, or
7 exploitation of disabled adults or elderly persons, the
8 department shall develop and maintain interprogram agreements
9 or operational procedures among appropriate departmental
10 programs and the State Long-Term Care Ombudsman Council, the
11 Florida Statewide Advocacy Council ~~Statewide Human Rights~~
12 ~~Advocacy Committee~~, and other agencies that provide services
13 to disabled adults or elderly persons. These agreements or
14 procedures must cover such subjects as the appropriate roles
15 and responsibilities of the department in identifying and
16 responding to reports of abuse, neglect, or exploitation of
17 disabled adults or elderly persons; the provision of services;
18 and related coordinated activities.

19 Section 25. Paragraph (g) of subsection (2) of section
20 415.107, Florida Statutes, is amended to read:

21 415.107 Confidentiality of reports and records.--

22 (2) Access to all records, excluding the name of the
23 reporter which shall be released only as provided in
24 subsection (6), shall be granted only to the following
25 persons, officials, and agencies:

26 (g) Any appropriate official of the Florida advocacy
27 council ~~human rights advocacy committee~~ or long-term care
28 ombudsman council investigating a report of known or suspected
29 abuse, neglect, or exploitation of a disabled adult or an
30 elderly person.

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1 Section 26. Subsection (3) of section 430.04, Florida
2 Statutes, is amended to read:

3 430.04 Duties and responsibilities of the Department
4 of Elderly Affairs.--The Department of Elderly Affairs shall:

5 (3) Prepare and submit to the Governor, each Cabinet
6 member, the President of the Senate, the Speaker of the House
7 of Representatives, the minority leaders of the House and
8 Senate, and chairpersons of appropriate House and Senate
9 committees a master plan for policies and programs in the
10 state related to aging. The plan must identify and assess the
11 needs of the elderly population in the areas of housing,
12 employment, education and training, medical care, long-term
13 care, preventive care, protective services, social services,
14 mental health, transportation, and long-term care insurance,
15 and other areas considered appropriate by the department. The
16 plan must assess the needs of particular subgroups of the
17 population and evaluate the capacity of existing programs,
18 both public and private and in state and local agencies, to
19 respond effectively to identified needs. If the plan
20 recommends the transfer of any program or service from the
21 Department of Children and Family Services to another state
22 department, the plan must also include recommendations that
23 provide for an independent third-party mechanism, as currently
24 exists in the Florida advocacy councils ~~human rights advocacy~~
25 ~~committees~~ established in ss. 402.165 and 402.166, for
26 protecting the constitutional and human rights of recipients
27 of departmental services. The plan must include policy goals
28 and program strategies designed to respond efficiently to
29 current and projected needs. The plan must also include policy
30 goals and program strategies to promote intergenerational
31 relationships and activities. Public hearings and other

1 appropriate processes shall be utilized by the department to
2 solicit input for the development and updating of the master
3 plan from parties including, but not limited to, the
4 following:

5 (a) Elderly citizens and their families and
6 caregivers.

7 (b) Local-level public and private service providers,
8 advocacy organizations, and other organizations relating to
9 the elderly.

10 (c) Local governments.

11 (d) All state agencies that provide services to the
12 elderly.

13 (e) University centers on aging.

14 (f) Area agency on aging and community care for the
15 elderly lead agencies.

16 Section 27. This act shall take effect July 1, 2000.

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