

By the Committees on Governmental Rules & Regulations,
Children & Families and Representatives Littlefield,
Alexander, Hart, Ogles, Wallace, Byrd, Flanagan, Bradley,
Murman, Fasano, L. Miller, Rayson and Greenstein

1 A bill to be entitled
2 An act relating to human rights; creating s.
3 402.164, F.S., and amending ss. 402.165,
4 402.166, and 402.167, F.S.; renaming the
5 statewide and district human rights advocacy
6 committees as the Florida statewide and local
7 advocacy councils; providing legislative intent
8 with 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 for access to records of the
19 state agencies subject to council
20 investigations; providing rulemaking authority
21 to such state agencies; amending ss. 39.001,
22 39.202, 39.302, 393.13, 394.459, 394.4595,
23 394.4597, 394.4598, 394.4599, 394.4615,
24 400.0067, 400.0089, 400.118, 400.141, 400.419,
25 400.428, 415.1034, 415.104, 415.1055, 415.106,
26 415.107, and 430.04, F.S.; correcting
27 references to conform to the act; providing an
28 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, s. 400.960, or s. 402.33, a forensic
20 client or client as defined in s. 916.106, a child or youth as
21 defined in s. 39.01, a child as defined in s. 827.01, a
22 handicapped child as defined in s. 411.202, a dependent child
23 as defined in s. 409.2554, a family as defined in s. 414.0252,
24 a participant as defined in s. 391.021 or s. 400.551, a
25 resident as defined in s. 400.402, a Medicaid recipient or
26 recipient as defined in s. 409.901, or a victim as defined in
27 s. 39.01 or s. 415.102.
28 (b) "Client services" means services which are
29 provided to a client by a state agency or a service provider
30 operated, funded, licensed, contracted, or regulated by the
31 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) There is created within the Department of Children
7 and Family Services a Florida Statewide Advocacy Council
8 ~~Statewide Human Rights Advocacy Committee~~. Members of the
9 council shall represent the interests of clients who are
10 served by state agencies that provide client services.The
11 Department of Children and Family Services shall provide
12 administrative support and service to the statewide council
13 ~~committee~~ to the extent requested by the executive director
14 within available resources. The statewide council is not
15 ~~Human Rights Advocacy Committee shall not be~~ subject to
16 control, supervision, or direction by the Department of
17 Children and Family Services in the performance of its duties.
18 The council committee shall consist of 15 residents of this
19 state citizens, one from each service area designated by the
20 statewide council district of the Department of Children and
21 ~~Family Services~~, who broadly represent the interests of the
22 public and the clients of the state agencies that provide
23 client services ~~that department~~. The members shall be
24 representative of four ~~five~~ groups of state residents ~~citizens~~
25 as follows: one provider who delivers ~~elected public~~
26 ~~official; two providers who deliver~~ client services as defined
27 in s. 402.164(2); two or programs to clients of the Department
28 ~~of Children and Family Services; four~~ nonsalaried
29 representatives of nonprofit agencies or civic groups; four
30 representatives of ~~health and rehabilitative services~~ consumer
31 groups who are currently receiving, or have received, client

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

1 (2) Members of the statewide council ~~Human Rights~~
2 ~~Advocacy Committee~~ shall be appointed to serve terms of 4 ~~3~~
3 years, retroactive to the members in office on July 1, 2000.
4 A member may not serve more than two full consecutive terms.
5 ~~The limitation on the number of terms a member may serve~~
6 ~~applies without regard to whether a term was served before or~~
7 ~~after October 1, 1989.~~

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

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

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

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

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

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

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

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

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

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

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

1 information and generation of complaints. Routine program
2 monitoring and reviews that do not require an examination of
3 records may be made unannounced.

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

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

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

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

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

30 1. The responsibilities of the statewide council and
31 the local councils ~~committee~~;

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

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

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

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

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

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

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

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

25 2. Access to all client records, files, and reports
26 from any program, service, or facility that is operated,
27 funded, licensed, contracted, or regulated by any state agency
28 that provides client ~~the Department of Children and Family~~
29 services and any records that ~~which~~ are material to its
30 investigation and ~~which~~ are in the custody of any other agency
31 or department of government. The council's ~~committee's~~

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

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

30 (b) All information obtained or produced by the
31 statewide council ~~that committee which~~ is made confidential by

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

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

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

31

1 action may be initiated by the council ~~committee~~ or other
2 administrative or law enforcement agency.

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

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

9 402.166 Florida local advocacy councils ~~District human~~
10 ~~rights advocacy committees~~; confidential records and
11 meetings.--

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

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

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

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

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

1 appointed by a majority vote of the statewide council ~~district~~
2 ~~committee~~ without further action by the Governor.

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

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

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

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

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

1 adopted under this section, the local council ~~thereto, a~~
2 ~~district committee~~ may recommend to the Governor that the ~~such~~
3 member be removed.

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

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

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

30 (b) Monitoring by site visit and inspection of
31 records, ~~the~~ delivery and use of services, programs, or

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

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

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

30 (e) Reviewing existing programs ~~or services~~ and
31 proposed new or revised programs of client ~~the Department of~~

1 ~~Children and Family~~ services and making recommendations as to
2 how these programs and services affect or might affect the
3 constitutional or human rights of clients ~~are affected~~.

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

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

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

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

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

1 required by federal law and regulation that ~~which~~ supersedes
2 state law. Access shall not be granted to the records of a
3 private licensed practitioner who is providing services
4 outside state agencies and facilities and whose client is
5 competent and refuses disclosure.

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

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

1 confidential and exempt from ~~the provisions of~~ s. 119.07(1)
2 and s. 24(a), Art. I of the State Constitution.

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

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

28 (e) Any person who knowingly and willfully discloses
29 any such confidential information commits ~~is guilty of~~ a
30 misdemeanor of the second degree, punishable as provided in s.
31 775.082 or s. 775.083.

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

3 402.167 Duties of state agencies that provide client
4 services relating to the Florida Statewide Advocacy Council
5 and the Florida local advocacy councils ~~Department duties~~
6 ~~relating to the Statewide Human Rights Advocacy Committee and~~
7 ~~the District Human Rights Advocacy Committees.--~~

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

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

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

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

25 ~~(d) Procedures by which committee members are~~
26 ~~reimbursed for authorized expenditures.~~

27 (2) The Department of Children and Family Services
28 shall provide for the location of local councils in area
29 ~~district human rights advocacy committees in district~~
30 ~~headquarters~~ offices and shall provide necessary equipment and
31 office supplies, including, but not limited to, clerical and

1 word processing services, photocopiers, telephone services,
2 and stationery and other necessary supplies, and shall
3 establish the procedures by which council members are
4 reimbursed for authorized expenditures.

5 (3) The secretaries or directors of the state agencies
6 ~~secretary~~ shall ensure the full cooperation and assistance of
7 employees of their respective state agencies ~~the Department of~~
8 ~~Children and Family Services~~ with members and staff of the
9 statewide and local councils ~~human rights advocacy committees.~~

10 Further, the Secretary of Children and Family Services shall
11 ensure that, to the extent possible, staff assigned to the
12 statewide council and local councils ~~Human Rights Advocacy~~
13 ~~Committees and District Human Rights Advocacy Committees~~ are
14 free of interference from or control by the department in
15 performing their duties relative to those councils ~~committees.~~

16 Section 5. Paragraph (a) of subsection (7) of section
17 39.001, Florida Statutes, is amended to read:

18 39.001 Purposes and intent; personnel standards and
19 screening.--

20 (7) PLAN FOR COMPREHENSIVE APPROACH.--

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

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

18 Section 6. Paragraph (k) of subsection (2) of section
19 39.202, Florida Statutes, is amended to read:

20 39.202 Confidentiality of reports and records in cases
21 of child abuse or neglect.--

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

26 (k) Any appropriate official of a Florida advocacy
27 council ~~the human rights advocacy committee~~ investigating a
28 report of known or suspected child abuse, abandonment, or
29 neglect, the Auditor General for the purpose of conducting
30 preliminary or compliance reviews pursuant to s. 11.45, or the
31 guardian ad litem for the child.

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

3 39.302 Protective investigations of institutional
4 child abuse, abandonment, or neglect.--

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

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

16 393.13 Personal treatment of persons who are
17 developmentally disabled.--

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

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

27 1. Treatment programs involving the use of noxious or
28 painful stimuli shall be prohibited.

29 2. All alleged violations of this paragraph shall be
30 reported immediately to the chief administrative officer of
31 the facility or the district administrator, the department

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

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

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

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

7 2. Totally enclosed cribs and barred enclosures shall
8 be considered restraints.

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

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

26 (7) RESIDENT GOVERNMENT.--Each residential facility
27 providing services to clients who are desirous and capable of
28 participating shall initiate and develop a program of resident
29 government to hear the views and represent the interests of
30 all clients served by the facility. The resident government
31 shall be composed of residents elected by other residents,

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

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

11 394.459 Rights of patients.--

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

13 (c) Each facility must permit immediate access to any
14 patient, subject to the patient's right to deny or withdraw
15 consent at any time, by the patient's family members,
16 guardian, guardian advocate, representative, Florida statewide
17 or local advocacy council ~~human rights advocacy committee~~, or
18 attorney, unless such access would be detrimental to the
19 patient. If a patient's right to communicate or to receive
20 visitors is restricted by the facility, written notice of such
21 restriction and the reasons for the restriction shall be
22 served on the patient, the patient's attorney, and the
23 patient's guardian, guardian advocate, or representative; and
24 such restriction shall be recorded on the patient's clinical
25 record with the reasons therefor. The restriction of a
26 patient's right to communicate or to receive visitors shall be
27 reviewed at least every 7 days. The right to communicate or
28 receive visitors shall not be restricted as a means of
29 punishment. Nothing in this paragraph shall be construed to
30 limit the provisions of paragraph (d).

31

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

14 Section 10. Section 394.4595, Florida Statutes, is
15 amended to read:

16 394.4595 Florida statewide and local advocacy
17 councils; ~~Human Rights Advocacy Committee~~ access to patients
18 and records.--Any facility designated by the department as a
19 receiving or treatment facility must allow access to any
20 patient and the clinical and legal records of any patient
21 admitted pursuant to the provisions of this act by members of
22 the Florida statewide and local advocacy councils ~~Human Rights~~
23 ~~Advocacy Committee~~.

24 Section 11. Paragraph (d) of subsection (2) of section
25 394.4597, Florida Statutes, is amended to read:

26 394.4597 Persons to be notified; patient's
27 representative.--

28 (2) INVOLUNTARY PATIENTS.--

29 (d) When the receiving or treatment facility selects a
30 representative, first preference shall be given to a health
31 care surrogate, if one has been previously selected by the

1 patient. If the patient has not previously selected a health
2 care surrogate, the selection, except for good cause
3 documented in the patient's clinical record, shall be made
4 from the following list in the order of listing:

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

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

14 394.4598 Guardian advocate.--

15 (1) The administrator may petition the court for the
16 appointment of a guardian advocate based upon the opinion of a
17 psychiatrist that the patient is incompetent to consent to
18 treatment. If the court finds that a patient is incompetent to
19 consent to treatment and has not been adjudicated
20 incapacitated and a guardian with the authority to consent to
21 mental health treatment appointed, it shall appoint a guardian
22 advocate. The patient has the right to have an attorney
23 represent him or her at the hearing. If the person is
24 indigent, the court shall appoint the office of the public
25 defender to represent him or her at the hearing. The patient
26 has the right to testify, cross-examine witnesses, and present
27 witnesses. The proceeding shall be recorded either
28 electronically or stenographically, and testimony shall be
29 provided under oath. One of the professionals authorized to
30 give an opinion in support of a petition for involuntary
31 placement, as described in s. 394.467(2), must testify. A

1 guardian advocate must meet the qualifications of a guardian
2 contained in part IV of chapter 744, except that a
3 professional referred to in this part, an employee of the
4 facility providing direct services to the patient under this
5 part, a departmental employee, a facility administrator, or
6 member of the Florida local advocacy council ~~district human~~
7 ~~rights advocacy committee~~ shall not be appointed. A person who
8 is appointed as a guardian advocate must agree to the
9 appointment.

10 Section 13. Paragraph (b) of subsection (2) of section
11 394.4599, Florida Statutes, is amended to read:

12 394.4599 Notice.--

13 (2) INVOLUNTARY PATIENTS.--

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

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

27 394.4615 Clinical records; confidentiality.--

28 (5) Information from clinical records may be used by
29 the Agency for Health Care Administration, the department, and
30 the Florida advocacy councils ~~human rights advocacy committees~~
31

1 for the purpose of monitoring facility activity and complaints
2 concerning facilities.

3 Section 15. Paragraph (g) of subsection (2) of section
4 400.0067, Florida Statutes, is amended to read:

5 400.0067 Establishment of State Long-Term Care
6 Ombudsman Council; duties; membership.--

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

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

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

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

30 Section 17. Paragraph (a) of subsection (2) of section
31 400.118, Florida Statutes, is amended to read:

1 400.118 Quality assurance; early warning system;
2 monitoring; rapid response teams.--

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

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

29 400.141 Administration and management of nursing home
30 facilities.--Every licensed facility shall comply with all
31 applicable standards and rules of the agency and shall:

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

9
10 Facilities that have been awarded a Gold Seal under the
11 program established in s. 400.235 may develop a plan to
12 provide certified nursing assistant training as prescribed by
13 federal regulations and state rules and may apply to the
14 agency for approval of its program.

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

17 400.419 Violations; administrative fines.--

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

1 printing and postage to other interested parties requesting a
2 copy of this list.

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

5 400.428 Resident bill of rights.--

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

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

22 415.1034 Mandatory reporting of abuse, neglect, or
23 exploitation of disabled adults or elderly persons; mandatory
24 reports of death.--

25 (1) MANDATORY REPORTING.--

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

27 1. Physician, osteopathic physician, medical examiner,
28 chiropractic physician, nurse, or hospital personnel engaged
29 in the admission, examination, care, or treatment of disabled
30 adults or elderly persons;

31

- 1 2. Health professional or mental health professional
2 other than one listed in subparagraph 1.;
- 3 3. Practitioner who relies solely on spiritual means
4 for healing;
- 5 4. Nursing home staff; assisted living facility staff;
6 adult day care center staff; adult family-care home staff;
7 social worker; or other professional adult care, residential,
8 or institutional staff;
- 9 5. State, county, or municipal criminal justice
10 employee or law enforcement officer;
- 11 6. Florida advocacy council member ~~Human rights~~
12 ~~advocacy committee~~ or long-term care ombudsman council member;
13 or
- 14 7. Bank, savings and loan, or credit union officer,
15 trustee, or employee,
16
17 who knows, or has reasonable cause to suspect, that a disabled
18 adult or an elderly person has been or is being abused,
19 neglected, or exploited shall immediately report such
20 knowledge or suspicion to the central abuse registry and
21 tracking system on the single statewide toll-free telephone
22 number.
- 23 Section 22. Subsection (1) of section 415.104, Florida
24 Statutes, is amended to read:
- 25 415.104 Protective services investigations of cases of
26 abuse, neglect, or exploitation of aged persons or disabled
27 adults; transmittal of records to state attorney.--
- 28 (1) The department shall, upon receipt of a report
29 alleging abuse, neglect, or exploitation of an aged person or
30 disabled adult, commence, or cause to be commenced within 24
31 hours, a protective services investigation of the facts

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

1 or in writing and shall include the name and location of the
2 aged person or disabled adult alleged to have been abused,
3 neglected, or exploited and the nature of the report. For
4 each report it receives, the department shall perform an
5 onsite investigation to:

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

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

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

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

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

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

9 415.1055 Notification to administrative entities,
10 subjects, and reporters; notification to law enforcement and
11 state attorneys.--

12 (1) NOTIFICATION TO ADMINISTRATIVE ENTITIES.--

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

22 (i) At the conclusion of a protective investigation at
23 a facility, the department shall notify either the Florida
24 local advocacy council ~~human rights advocacy committee~~ or
25 long-term care ombudsman council of the results of the
26 investigation. This notification must be in writing.

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

29 415.106 Cooperation by the department and criminal
30 justice and other agencies.--

31

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

15 Section 25. Paragraph (g) of subsection (2) of section
16 415.107, Florida Statutes, is amended to read:

17 415.107 Confidentiality of reports and records.--

18 (2) Access to all records, excluding the name of the
19 reporter which shall be released only as provided in
20 subsection (6), shall be granted only to the following
21 persons, officials, and agencies:

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

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

29 430.04 Duties and responsibilities of the Department
30 of Elderly Affairs.--The Department of Elderly Affairs shall:

31

1 (3) Prepare and submit to the Governor, each Cabinet
2 member, the President of the Senate, the Speaker of the House
3 of Representatives, the minority leaders of the House and
4 Senate, and chairpersons of appropriate House and Senate
5 committees a master plan for policies and programs in the
6 state related to aging. The plan must identify and assess the
7 needs of the elderly population in the areas of housing,
8 employment, education and training, medical care, long-term
9 care, preventive care, protective services, social services,
10 mental health, transportation, and long-term care insurance,
11 and other areas considered appropriate by the department. The
12 plan must assess the needs of particular subgroups of the
13 population and evaluate the capacity of existing programs,
14 both public and private and in state and local agencies, to
15 respond effectively to identified needs. If the plan
16 recommends the transfer of any program or service from the
17 Department of Children and Family Services to another state
18 department, the plan must also include recommendations that
19 provide for an independent third-party mechanism, as currently
20 exists in the Florida advocacy councils ~~human rights advocacy~~
21 ~~committees~~ established in ss. 402.165 and 402.166, for
22 protecting the constitutional and human rights of recipients
23 of departmental services. The plan must include policy goals
24 and program strategies designed to respond efficiently to
25 current and projected needs. The plan must also include policy
26 goals and program strategies to promote intergenerational
27 relationships and activities. Public hearings and other
28 appropriate processes shall be utilized by the department to
29 solicit input for the development and updating of the master
30 plan from parties including, but not limited to, the
31 following:

- 1 (a) Elderly citizens and their families and
2 caregivers.
- 3 (b) Local-level public and private service providers,
4 advocacy organizations, and other organizations relating to
5 the elderly.
- 6 (c) Local governments.
- 7 (d) All state agencies that provide services to the
8 elderly.
- 9 (e) University centers on aging.
- 10 (f) Area agency on aging and community care for the
11 elderly lead agencies.

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

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HOUSE SUMMARY

Renames the statewide and district human rights advocacy committees as the Florida statewide and local advocacy councils. Provides legislative intent. Defines "client" and "client services." Provides duties of the councils with respect to monitoring and investigating abuse or deprivation of constitutional or human rights of clients receiving client services from any state agency. Current law provides for such actions only with respect to clients of the Department of Children and Family Services. Revises statewide and local council membership, appointment, officers, and terms of service. Provides for revision of local council service areas, which are to be determined by the statewide council. Provides duties of state agencies with respect to the statewide and local councils. Provides for local council access to state agency records. Authorizes the state agencies subject to council investigations to adopt rules.