

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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Representative(s) Green offered the following:

Amendment (with title amendment)

On page 30, between lines 27 and 28, of the bill

insert:

Section 12. Section 409.221, Florida Statutes, is created to read:

409.221 Consumer-directed care program.--

(1) SHORT TITLE.--This section may be cited as the "Florida Consumer-Directed Care Act."

(2) LEGISLATIVE FINDINGS.--The Legislature finds that alternatives to institutional care, such as in-home and community-based care, should be encouraged. The Legislature finds that giving recipients of in-home and community-based services the opportunity to select the services they need and the providers they want, including family and friends, enhances their sense of dignity and autonomy. The Legislature also finds that providing consumers choice and control, as tested in current research and demonstration projects, has been beneficial and should be developed further and

1 implemented statewide.

2 (3) LEGISLATIVE INTENT.--It is the intent of the
3 Legislature to nurture the autonomy of those citizens of the
4 state, of all ages, who have disabilities by providing the
5 long-term care services they need in the least restrictive,
6 appropriate setting. It is the intent of the Legislature to
7 give such individuals more choices in and greater control over
8 the purchased long-term care services they receive.

9 (4) CONSUMER-DIRECTED CARE.--

10 (a) Program established.--The Agency for Health Care
11 Administration shall establish the consumer-directed care
12 program which shall be based on the principles of consumer
13 choice and control. The agency shall implement the program
14 upon federal approval. The agency shall establish interagency
15 cooperative agreements with and shall work with the
16 Departments of Elderly Affairs, Health, and Children and
17 Family Services to implement and administer the program. The
18 program shall allow enrolled persons to choose the providers
19 of services and to direct the delivery of services, to best
20 meet their long-term care needs. The program must operate
21 within the funds appropriated by the Legislature.

22 (b) Eligibility and enrollment.--Persons who are
23 enrolled in one of the Medicaid home and community-based
24 waiver programs and are able to direct their own care, or to
25 designate an eligible representative, may choose to
26 participate in the consumer-directed care program.

27 (c) Definitions.--For purposes of this section, the
28 term:

29 1. "Budget allowance" means the amount of money made
30 available each month to a consumer to purchase needed
31 long-term care services, based on the results of a functional

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 needs assessment.

2 2. "Consultant" means an individual who provides
3 technical assistance to consumers in meeting their
4 responsibilities under this section.

5 3. "Consumer" means a person who has chosen to
6 participate in the program, has met the enrollment
7 requirements, and has received an approved budget allowance.

8 4. "Fiscal intermediary" means an entity approved by
9 the agency that helps the consumer manage the consumer's
10 budget allowance, retains the funds, processes employment
11 information, if any, and tax information, reviews records to
12 ensure correctness, writes paychecks to providers, and
13 delivers paychecks to the consumer for distribution to
14 providers and caregivers.

15 5. "Provider" means:

16 a. A person licensed or otherwise permitted to render
17 services eligible for reimbursement under this program for
18 whom the consumer is not the employer of record; or

19 b. A consumer-employed caregiver for whom the consumer
20 is the employer of record.

21 6. "Representative" means an uncompensated individual
22 designated by the consumer to assist in managing the
23 consumer's budget allowance and needed services.

24 (d) Budget allowances.--Consumers enrolled in the
25 program shall be given a monthly budget allowance based on the
26 results of their assessed functional needs and the financial
27 resources of the program. Consumers shall receive the budget
28 allowance directly from an agency-approved fiscal
29 intermediary. Each department shall develop purchasing
30 guidelines, approved by the agency, to assist consumers in
31 using the budget allowance to purchase needed, cost-effective

1 services.

2 (e) Services.--Consumers shall use the budget
3 allowance only to pay for home and community-based services
4 that meet the consumer's long-term care needs and are a
5 cost-efficient use of funds. Such services may include, but
6 are not limited to, the following:

7 1. Personal care.

8 2. Homemaking and chores, including housework, meals,
9 shopping, and transportation.

10 3. Home modifications and assistive devices which may
11 increase the consumer's independence or make it possible to
12 avoid institutional placement.

13 4. Assistance in taking self-administered medication.

14 5. Day care and respite care services, including those
15 provided by nursing home facilities pursuant to s. 400.141(6)
16 or by adult day care facilities licensed pursuant to s.
17 400.554.

18 6. Personal care and support services provided in an
19 assisted living facility.

20 (f) Consumer roles and responsibilities.--Consumers
21 shall be allowed to choose the providers of services, as well
22 as when and how the services are provided. Providers may
23 include a consumer's neighbor, friend, spouse, or relative.

24 1. In cases where a consumer is the employer of
25 record, the consumer's roles and responsibilities include, but
26 are not limited to, the following:

27 a. Developing a job description.

28 b. Selecting caregivers and submitting information for
29 the background screening as required in s. 435.05.

30 c. Communicating needs, preferences, and expectations
31 about services being purchased.

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 d. Providing the fiscal intermediary with all
2 information necessary for provider payments and tax
3 requirements.

4 e. Ending the employment of an unsatisfactory
5 caregiver.

6 2. In cases where a consumer is not the employer of
7 record, the consumer's roles and responsibilities include, but
8 are not limited to, the following:

9 a. Communicating needs, preferences, and expectations
10 about services being purchased.

11 b. Ending the services of an unsatisfactory provider.

12 c. Providing the fiscal agent with all information
13 necessary for provider payments and tax requirements.

14 (g) Agency and departments roles and
15 responsibilities.--The agency's and the departments' roles and
16 responsibilities include, but are not limited to, the
17 following:

18 1. Assessing each consumer's functional needs, helping
19 with the service plan, and providing ongoing assistance with
20 the service plan.

21 2. Offering the services of consultants who shall
22 provide training, technical assistance, and support to the
23 consumer.

24 3. Completing the background screening for providers.

25 4. Approving fiscal intermediaries.

26 5. Establishing the minimum qualifications for all
27 caregivers and providers and being the final arbiter of the
28 fitness of any individual to be a caregiver or provider.

29 (h) Fiscal intermediary roles and
30 responsibilities.--The fiscal intermediary's roles and
31 responsibilities include, but are not limited to, the

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 following:

2 1. Providing recordkeeping services.

3 2. Retaining the consumer-directed care funds,
4 processing employment and tax information, if any, reviewing
5 records to ensure correctness, writing paychecks to providers,
6 and delivering paychecks to the consumer for distribution.

7 (i) Background screening requirements.--All persons
8 who render care under this section shall comply with the
9 requirements of s. 435.05. Persons shall be excluded from
10 employment pursuant to s. 435.06.

11 1. Persons excluded from employment may request an
12 exemption from disqualification, as provided in s. 435.07.
13 Persons not subject to certification or professional licensure
14 may request an exemption from the agency. In considering a
15 request for an exemption, the agency shall comply with the
16 provisions of s. 435.07.

17 2. The agency shall, as allowable, reimburse
18 consumer-employed caregivers for the cost of conducting
19 background screening as required by this section.

20
21 For purposes of this section, a person who has undergone
22 screening, who is qualified for employment under this section
23 and applicable rule, and who has not been unemployed for more
24 than 180 days following such screening is not required to be
25 rescreened. Such person must attest under penalty of perjury
26 to not having been convicted of a disqualifying offense since
27 completing such screening.

28 (j) Rules; federal waivers.--In order to implement
29 this section:

30 1. The agency and the Departments of Elderly Affairs,
31 Health, and Children and Family Services are authorized to

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 adopt and enforce rules.

2 2. The agency shall take all necessary action to
3 ensure state compliance with federal regulations. The agency
4 shall apply for any necessary federal waivers or waiver
5 amendments needed to implement the program.

6 (k) Reviews and reports.--The agency and the
7 Departments of Elderly Affairs, Health, and Children and
8 Family Services shall each, on an ongoing basis, review and
9 assess the implementation of the consumer-directed care
10 program. By January 15 of each year, the agency shall submit a
11 written report to the Legislature that includes each
12 department's review of the program and contains
13 recommendations for improvements to the program.

14 Section 13. (1) Prior to December 1, 2002, the Agency
15 for Health Care Administration, in consultation with the
16 Department of Elderly Affairs, shall submit to the Governor,
17 the President of the Senate, and the Speaker of the House of
18 Representatives a plan to reduce the number of nursing home
19 bed days purchased by the state Medicaid program and to
20 replace such nursing home care with care provided in less
21 costly alternative settings.

22 (2) The plan must include specific goals for reducing
23 Medicaid-funded bed days and recommend specific statutory and
24 operational changes necessary to achieve such reduction.

25 (3) The plan must include an evaluation of the
26 cost-effectiveness and the relative strengths and weaknesses
27 of programs that serve as alternatives to nursing homes.

28 Section 14. Section 408.034, Florida Statutes, is
29 amended to read:

30 408.034 Duties and responsibilities of agency;
31 rules.--

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 (1) The agency is designated as the single state
2 agency to issue, revoke, or deny certificates of need and to
3 issue, revoke, or deny exemptions from certificate-of-need
4 review in accordance with the district plans and present and
5 future federal and state statutes. The agency is designated
6 as the state health planning agency for purposes of federal
7 law.

8 (2) In the exercise of its authority to issue licenses
9 to health care facilities and health service providers, as
10 provided under chapters 393, 395, and parts II and VI of
11 chapter 400, the agency may not issue a license to any health
12 care facility, health service provider, hospice, or part of a
13 health care facility which fails to receive a certificate of
14 need or an exemption for the licensed facility or service.

15 (3) The agency shall establish, by rule, uniform need
16 methodologies for health services and health facilities. In
17 developing uniform need methodologies, the agency shall, at a
18 minimum, consider the demographic characteristics of the
19 population, the health status of the population, service use
20 patterns, standards and trends, geographic accessibility, and
21 market economics.

22 (4) Prior to determining that there is a need for
23 additional community nursing facility beds in any area of the
24 state, the agency shall determine that the need cannot be met
25 through the provision, enhancement, or expansion of home and
26 community-based services. In determining such need, the agency
27 shall examine nursing home placement patterns and demographic
28 patterns of persons entering nursing homes and the
29 availability of and effectiveness of existing home-based and
30 community-based service delivery systems at meeting the
31 long-term care needs of the population. The agency shall

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 recommend to the Office of Long-Term Care Policy changes that
2 could be made to existing home-based and community-based
3 delivery systems to lessen the need for additional nursing
4 facility beds.

5 ~~(5)~~(4) The agency shall establish by rule a
6 nursing-home-bed-need methodology that reduces the community
7 nursing home bed need for the areas of the state where the
8 agency establishes pilot community diversion programs through
9 the Title XIX aging waiver program.

10 ~~(6)~~(5) The agency may adopt rules necessary to
11 implement ss. 408.031-408.045.

12 Section 15. Paragraph (f) of subsection (3) of section
13 409.912, Florida Statutes, is amended, and present subsections
14 (13) through (39) of said section are renumbered as
15 subsections (14) through (40), respectively, and a new
16 subsection (13) is added to that section, to read:

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

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 classes, or particular drugs to prevent fraud, abuse, overuse,
2 and possible dangerous drug interactions. The Pharmaceutical
3 and Therapeutics Committee shall make recommendations to the
4 agency on drugs for which prior authorization is required. The
5 agency shall inform the Pharmaceutical and Therapeutics
6 Committee of its decisions regarding drugs subject to prior
7 authorization.

8 (3) The agency may contract with:

9 (f) An entity that provides in-home physician services
10 to test the cost-effectiveness of enhanced home-based medical
11 care to Medicaid recipients with degenerative neurological
12 diseases and other diseases or disabling conditions associated
13 with high costs to Medicaid. The program shall be designed to
14 serve very disabled persons and to reduce Medicaid reimbursed
15 costs for inpatient, outpatient, and emergency department
16 services. The agency shall contract with vendors on a
17 risk-sharing basis.~~in Pasco County or Pinellas County that~~
18 ~~provides in-home physician services to Medicaid recipients~~
19 ~~with degenerative neurological diseases in order to test the~~
20 ~~cost-effectiveness of enhanced home-based medical care. The~~
21 ~~entity providing the services shall be reimbursed on a~~
22 ~~fee-for-service basis at a rate not less than comparable~~
23 ~~Medicare reimbursement rates. The agency may apply for waivers~~
24 ~~of federal regulations necessary to implement such program.~~
25 ~~This paragraph shall be repealed on July 1, 2002.~~

26 (13)(a) The agency shall operate the Comprehensive
27 Assessment and Review (CARES) nursing facility preadmission
28 screening program to ensure that Medicaid payment for nursing
29 facility care is made only for individuals whose conditions
30 require such care and to ensure that long-term care services
31 are provided in the setting most appropriate to the needs of

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 the person and in the most economical manner possible. The
2 CARES program shall also ensure that individuals participating
3 in Medicaid home and community-based waiver programs meet
4 criteria for those programs, consistent with approved federal
5 waivers.

6 (b) The agency shall operate the CARES program through
7 an interagency agreement with the Department of Elderly
8 Affairs.

9 (c) Prior to making payment for nursing facility
10 services for a Medicaid recipient, the agency must verify that
11 the nursing facility preadmission screening program has
12 determined that the individual requires nursing facility care
13 and that the individual cannot be safely served in
14 community-based programs. The nursing facility preadmission
15 screening program shall refer a Medicaid recipient to a
16 community-based program if the individual could be safely
17 served at a lower cost and the recipient chooses to
18 participate in such program.

19 (d) By January 1 of each year, the agency shall submit
20 a report to the Legislature and the Office of Long-Term Care
21 Policy describing the operations of the CARES program. The
22 report must describe:

23 1. Rate of diversion to community alternative
24 programs;

25 2. CARES program staffing needs to achieve additional
26 diversions;

27 3. Reasons the program is unable to place individuals
28 in less restrictive settings when such individuals desired
29 such services and could have been served in such settings;

30 4. Barriers to appropriate placement, including
31 barriers due to policies or operations of other agencies or

1 state-funded programs; and

2 5. Statutory changes necessary to ensure that
3 individuals in need of long-term care services receive care in
4 the least restrictive environment.

5 Section 16. Section 430.7031, Florida Statutes, is
6 created to read:

7 430.7031 Nursing home transition program.--The
8 department and the Agency for Health Care Administration:

9 (1) Shall implement a system of care designed to
10 assist individuals residing in nursing homes to regain
11 independence and to move to less costly settings.

12 (2) Shall collaboratively work to identify long-stay
13 nursing home residents who are able to move to community
14 placements, and to provide case management and supportive
15 services to such individuals while they are in nursing homes
16 to assist such individuals in moving to less expensive and
17 less restrictive settings.

18 (3) Shall modify existing service delivery systems or
19 develop new service delivery systems to economically and
20 efficiently meet such individuals' care needs.

21 (4) Shall offer such individuals priority placement
22 and services in all home-based and community-based care
23 programs and shall ensure that funds are available to provide
24 services to individuals to whom services are offered.

25 (5) May seek federal waivers necessary to administer
26 this section.

27 Section 17. Subsection (4) of section 409.908, Florida
28 Statutes, is amended to read:

29 409.908 Reimbursement of Medicaid providers.--Subject
30 to specific appropriations, the agency shall reimburse
31 Medicaid providers, in accordance with state and federal law,

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 according to methodologies set forth in the rules of the
2 agency and in policy manuals and handbooks incorporated by
3 reference therein. These methodologies may include fee
4 schedules, reimbursement methods based on cost reporting,
5 negotiated fees, competitive bidding pursuant to s. 287.057,
6 and other mechanisms the agency considers efficient and
7 effective for purchasing services or goods on behalf of
8 recipients. Payment for Medicaid compensable services made on
9 behalf of Medicaid eligible persons is subject to the
10 availability of moneys and any limitations or directions
11 provided for in the General Appropriations Act or chapter 216.
12 Further, nothing in this section shall be construed to prevent
13 or limit the agency from adjusting fees, reimbursement rates,
14 lengths of stay, number of visits, or number of services, or
15 making any other adjustments necessary to comply with the
16 availability of moneys and any limitations or directions
17 provided for in the General Appropriations Act, provided the
18 adjustment is consistent with legislative intent.

19 (4) Subject to any limitations or directions provided
20 for in the General Appropriations Act, alternative health
21 plans, health maintenance organizations, and prepaid health
22 plans shall be reimbursed a fixed, prepaid amount negotiated,
23 or competitively bid pursuant to s. 287.057, by the agency and
24 prospectively paid to the provider monthly for each Medicaid
25 recipient enrolled. The amount may not exceed the average
26 amount the agency determines it would have paid, based on
27 claims experience, for recipients in the same or similar
28 category of eligibility. The agency shall calculate
29 capitation rates on a regional basis and, beginning September
30 1, 1995, shall include age-band differentials in such
31 calculations. Effective July 1, 2001, the cost of exempting

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 statutory teaching hospitals, specialty hospitals, and
2 community hospital education program hospitals from
3 reimbursement ceilings and the cost of special Medicaid
4 payments shall not be included in premiums paid to health
5 maintenance organizations or prepaid health care plans. Each
6 rate semester, the agency shall calculate and publish a
7 Medicaid hospital rate schedule that does not reflect either
8 special Medicaid payments or the elimination of rate
9 reimbursement ceilings, to be used by hospitals and Medicaid
10 health maintenance organizations, in order to determine the
11 Medicaid rate referred to in ss. 409.912(17)~~409.912(16)~~,
12 409.9128(5), and 641.513(6).

13 Section 18. Section 430.708, Florida Statutes, is
14 amended to read:

15 430.708 Certificate of need.--To ensure that Medicaid
16 community diversion pilot projects result in a reduction in
17 the projected average monthly nursing home caseload, the
18 agency shall, in accordance with the provisions of s.
19 408.034(5)~~s. 408.034(4)~~:

20 (1) Reduce the projected nursing home bed need in each
21 certificate-of-need batching cycle in the community diversion
22 pilot project areas.

23 (2) Reduce the conditions imposed on existing nursing
24 homes or those to be constructed, in accordance with the
25 number of projected community diversion slots.

26 (3) Adopt rules to reduce the number of beds in
27 Medicaid-participating nursing homes eligible for Medicaid,
28 through a Medicaid-selective contracting process or some other
29 appropriate method.

30 (4) Determine the feasibility of increasing the
31 nursing home occupancy threshold used in determining nursing

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 home bed needs under the certificate-of-need process.

2 Section 19. Subsection (4) of section 641.386, Florida
3 Statutes, is amended to read:

4 641.386 Agent licensing and appointment required;
5 exceptions.--

6 (4) All agents and health maintenance organizations
7 shall comply with and be subject to the applicable provisions
8 of ss. 641.309 and 409.912(19)~~409.912(18)~~, and all companies
9 and entities appointing agents shall comply with s. 626.451,
10 when marketing for any health maintenance organization
11 licensed pursuant to this part, including those organizations
12 under contract with the Agency for Health Care Administration
13 to provide health care services to Medicaid recipients or any
14 private entity providing health care services to Medicaid
15 recipients pursuant to a prepaid health plan contract with the
16 Agency for Health Care Administration.

17 Section 20. Subsection (4) of section 20.41, Florida
18 Statutes, is amended to read:

19 20.41 Department of Elderly Affairs.--There is created
20 a Department of Elderly Affairs.

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

30 Section 21. Subsection (1) and paragraph (b) of
31 subsection (2) of section 400.0063, Florida Statutes, are

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 amended to read:

2 400.0063 Establishment of Office of State Long-Term
3 Care Ombudsman; designation of ombudsman and legal advocate.--

4 (1) There is created an Office of State Long-Term Care
5 Ombudsman, ~~which shall be located for administrative purposes~~
6 in the Department of Elderly Affairs.

7 (2)

8 (b) The State Long-Term Care Ombudsman shall be
9 appointed by and shall serve at the pleasure of the Secretary
10 ~~of Elderly Affairs State Long-Term Care Ombudsman Council~~. No
11 person who has a conflict of interest, or has an immediate
12 family member who has a conflict of interest, may be involved
13 in the designation of the ombudsman.

14 Section 22. Paragraphs (c) and (f) of subsection (2)
15 and subsection (3) of section 400.0065, Florida Statutes, are
16 amended to read:

17 400.0065 State Long-Term Care Ombudsman; duties and
18 responsibilities; conflict of interest.--

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

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

31 ~~(f) Annually prepare a budget request that shall be~~

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 ~~submitted to the Governor by the department for transmittal to~~
2 ~~the Legislature.~~

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

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

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

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

14

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

19 Section 23. Paragraphs (c), (d), (f), and (g) of
20 subsection (2) and paragraph (b) of subsection (3) of section
21 400.0067, Florida Statutes, are amended to read:

22 400.0067 Establishment of State Long-Term Care
23 Ombudsman Council; duties; membership.--

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

25 (c) Assist the ombudsman to discover, investigate, and
26 determine the existence of abuse or neglect in any long-term
27 care facility ~~and to develop procedures, in consultation with~~
28 The Department of Elderly Affairs shall develop procedures,
29 relating to such investigations. Investigations may consist,
30 in part, of one or more onsite administrative inspections.

31 (d) Assist the ombudsman in eliciting, receiving,

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 responding to, and resolving complaints made by or on behalf
2 of long-term care facility residents and in developing
3 procedures, ~~in consultation with the Department of Elderly~~
4 ~~Affairs,~~ relating to the receipt and resolution of such
5 complaints. The secretary shall approve all such procedures.

6 ~~(f) Be authorized to call upon appropriate agencies of~~
7 ~~state government for such professional assistance as may be~~
8 ~~needed in the discharge of its duties, including assistance~~
9 ~~from the adult protective services program of the Department~~
10 ~~of Children and Family Services.~~

11 (f)(g) Prepare an annual report describing the
12 activities carried out by the ombudsman and the State
13 Long-Term Care Ombudsman Council in the year for which the
14 report is prepared. The State Long-Term Care Ombudsman
15 Council shall submit the report to the Secretary of Elderly
16 Affairs. The secretary shall in turn submit the report to the
17 Commissioner of the United States Administration on Aging, the
18 Governor, the President of the Senate, the Speaker of the
19 House of Representatives, the minority leaders of the House
20 and Senate, the chairpersons of appropriate House and Senate
21 committees, the Secretary of Secretaries of Elderly Affairs
22 and Children and Family Services, and the Secretary of Health
23 Care Administration. The report shall be submitted by the
24 Secretary of Elderly Affairs at least 30 days before the
25 convening of the regular session of the Legislature and shall,
26 at a minimum:

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

29 2. Evaluate the problems experienced by residents of
30 long-term care facilities.

31 3. Contain recommendations for improving the quality

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 of life of the residents and for protecting the health,
2 safety, welfare, and rights of the residents.

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

13 5. Provide policy and regulatory and legislative
14 recommendations to solve identified problems; resolve
15 residents' complaints; improve the quality of care and life of
16 the residents; protect the health, safety, welfare, and rights
17 of the residents; and remove the barriers to the optimal
18 operation of the state long-term care ombudsman program.

19 6. Contain recommendations from the local ombudsman
20 councils regarding program functions and activities.

21 7. Include a report on the activities of the legal
22 advocate and other legal advocates acting on behalf of the
23 local and state councils.

24 (3)

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

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

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 3. If the Governor's appointments are not made within
2 60 days after the ombudsman submits the list, the ombudsman,
3 in consultation with the secretary ~~State Long-Term Care~~
4 ~~Ombudsman Council~~, shall appoint three members, one of whom
5 must be over 60 years of age.

6 Section 24. Subsection (4) of section 400.0069,
7 Florida Statutes, is amended to read:

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

10 (4) Each local ombudsman council shall be composed of
11 no less than 15 members and no more than 40 ~~30~~ members from
12 the local planning and service area, to include the following:
13 one medical or osteopathic physician whose practice includes
14 or has included a substantial number of geriatric patients and
15 who may have limited practice in a long-term care facility;
16 one registered nurse who has geriatric experience, if
17 possible; one licensed pharmacist; one registered dietitian;
18 at least six nursing home residents or representative consumer
19 advocates for nursing home residents; at least three residents
20 of assisted living facilities or adult family-care homes or
21 three representative consumer advocates for long-term care
22 facility residents; one attorney; and one professional social
23 worker. In no case shall the medical director of a long-term
24 care facility or an employee of the Agency for Health Care
25 Administration, the Department of Children and Family
26 Services, or the Department of Elderly Affairs serve as a
27 member or as an ex officio member of a council. Each member
28 of the council shall certify that neither the council member
29 nor any member of the council member's immediate family has
30 any conflict of interest pursuant to subsection (10). Local
31 ombudsman councils are encouraged to recruit council members

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 who are 60 years of age or older.

2 Section 25. Subsection (1) of section 400.0071,
3 Florida Statutes, is amended to read:

4 400.0071 Complaint procedures.--

5 (1) The state ombudsman council shall recommend to the
6 ombudsman and the secretary ~~establish~~ state and local
7 procedures for receiving complaints against a nursing home or
8 long-term care facility or its employee. The procedures shall
9 be implemented after the approval of the ombudsman and the
10 secretary.

11 Section 26. Subsections (1) and (2) of section
12 400.0087, Florida Statutes, are amended to read:

13 400.0087 Agency oversight.--

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

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

31 Section 27. Section 400.0089, Florida Statutes, is

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 amended to read:

2 400.0089 Agency reports.--The ~~State Long-Term Care~~
3 ~~Ombudsman Council, shall, in cooperation with the~~ Department
4 of Elderly Affairs shall maintain a statewide uniform
5 reporting system to collect and analyze data relating to
6 complaints and conditions in long-term care facilities and to
7 residents, for the purpose of identifying and resolving
8 significant problems. The department and the State Long-Term
9 Care Ombudsman Council shall submit such data as part of its
10 annual report required pursuant to s. 400.0067(2)(g) to the
11 Agency for Health Care Administration, the Department of
12 Children and Family Services, the Florida Statewide Advocacy
13 Council, the Advocacy Center for Persons with Disabilities,
14 the Commissioner for the United States Administration on
15 Aging, the National Ombudsman Resource Center, and any other
16 state or federal entities that the ombudsman determines
17 appropriate. The State Long-Term Care Ombudsman Council shall
18 publish quarterly and make readily available information
19 pertaining to the number and types of complaints received by
20 the long-term care ombudsman program.

21 Section 28. Section 400.0091, Florida Statutes, is
22 amended to read:

23 400.0091 Training.--The ombudsman shall provide
24 appropriate training to all employees of the Office of State
25 Long-Term Care Ombudsman and to the state and local long-term
26 care ombudsman councils, including all unpaid volunteers. All
27 volunteers and appropriate employees of the Office of the
28 State Long-Term Care Ombudsman must be given a minimum of 20
29 hours of training upon employment or enrollment as a volunteer
30 and 10 hours of continuing education annually thereafter.
31 Training must cover, at a minimum, guardianships and powers of

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 attorney, medication administration, care and medication of
2 residents with dementia and Alzheimer's disease, accounting
3 for residents' funds, discharge rights and responsibilities,
4 and cultural sensitivity.No employee, officer, or
5 representative of the office or of the state or local
6 long-term care ombudsman councils, other than the ombudsman,
7 may carry out any authorized ombudsman duty or responsibility
8 unless the person has received the training required by this
9 section and has been approved by the ombudsman as qualified to
10 carry out ombudsman activities on behalf of the office or the
11 state or local long-term care ombudsman councils.

12 Section 29. Paragraph (d) of subsection (5) of section
13 400.179, Florida Statutes, is amended to read:

14 400.179 Sale or transfer of ownership of a nursing
15 facility; liability for Medicaid underpayments and
16 overpayments.--

17 (5) Because any transfer of a nursing facility may
18 expose the fact that Medicaid may have underpaid or overpaid
19 the transferor, and because in most instances, any such
20 underpayment or overpayment can only be determined following a
21 formal field audit, the liabilities for any such underpayments
22 or overpayments shall be as follows:

23 (d) Where the transfer involves a facility that has
24 been leased by the transferor:

25 1. The transferee shall, as a condition to being
26 issued a license by the agency, acquire, maintain, and provide
27 proof to the agency of a bond with a term of 30 months,
28 renewable annually, in an amount not less than the total of 3
29 months Medicaid payments to the facility computed on the basis
30 of the preceding 12-month average Medicaid payments to the
31 facility.

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 2. The leasehold operator may meet the bond
2 requirement through other arrangements acceptable to the
3 department.

4 3. All existing nursing facility licensees, operating
5 the facility as a leasehold, shall acquire, maintain, and
6 provide proof to the agency of the 30-month bond required in
7 subparagraph 1., above, on and after July 1, 1993, for each
8 license renewal.

9 4. It shall be the responsibility of all nursing
10 facility operators, operating the facility as a leasehold, to
11 renew the 30-month bond and to provide proof of such renewal
12 to the agency annually at the time of application for license
13 renewal.

14 5. Any failure of the nursing facility operator to
15 acquire, maintain, renew annually, or provide proof to the
16 agency shall be grounds for the agency to deny, cancel,
17 revoke, or suspend the facility license to operate such
18 facility and to take any further action, including, but not
19 limited to, enjoining the facility, asserting a moratorium, or
20 applying for a receiver, deemed necessary to ensure compliance
21 with this section and to safeguard and protect the health,
22 safety, and welfare of the facility's residents. A lease
23 agreement required as a condition of bond financing or
24 refinancing under s. 154.213 by a health facilities authority
25 or required under s. 159.30 by a county or municipality is not
26 a leasehold for purposes of this paragraph and is not subject
27 to the bond requirement of this paragraph.

28 Section 30. Subsection (20) of section 400.141,
29 Florida Statutes, is amended to read:

30 400.141 Administration and management of nursing home
31 facilities.--Every licensed facility shall comply with all

1 applicable standards and rules of the agency and shall:

2 (20) Maintain liability insurance coverage that is in
3 force at all times. In lieu of general and professional
4 liability insurance coverage, a state-designated teaching
5 nursing home and its affiliated assisted living facilities
6 created under s. 430.80 may demonstrate proof of financial
7 responsibility as provided in s. 430.80(3)(h); the exception
8 provided in this paragraph shall expire July 1, 2005.

9 Section 31. Paragraph (h) is added to subsection (3)
10 of section 430.80, Florida Statutes, to read:

11 430.80 Implementation of a teaching nursing home pilot
12 project.--

13 (3) To be designated as a teaching nursing home, a
14 nursing home licensee must, at a minimum:

15 (h) Maintain insurance coverage pursuant to s.
16 400.141(20) or proof of financial responsibility in a minimum
17 amount of \$750,000. Such proof of financial responsibility may
18 include:

19 1. Maintaining an escrow account consisting of cash or
20 assets eligible for deposit in accordance with s. 625.52; or

21 2. Obtaining and maintaining pursuant to chapter 675
22 an unexpired, irrevocable, nontransferable and nonassignable
23 letter of credit issued by any bank or savings association
24 organized and existing under the laws of this state or any
25 bank or savings association organized under the laws of the
26 United States that has its principal place of business in this
27 state or has a branch office which is authorized to receive
28 deposits in this state. The letter of credit shall be used to
29 satisfy the obligation of the facility to the claimant upon
30 presentment of a final judgment indicating liability and
31 awarding damages to be paid by the facility or upon

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 presentment of a settlement agreement signed by all parties to
2 the agreement when such final judgment or settlement is a
3 result of a liability claim against the facility.

4 Section 32. Subsection (1) of section 477.025, Florida
5 Statutes, is amended, and subsection (11) is added to said
6 section, to read:

7 477.025 Cosmetology salons; specialty salons;
8 requisites; licensure; inspection; mobile cosmetology
9 salons.--

10 (1) No cosmetology salon or specialty salon shall be
11 permitted to operate without a license issued by the
12 department except as provided in subsection (11).

13 (11) Facilities licensed under part II or part III of
14 chapter 400 shall be exempt from the provisions of this
15 section and a cosmetologist licensed pursuant to s. 477.019
16 may provide salon services exclusively for facility residents.

17 Section 33. Section 627.9408, Florida Statutes, is
18 amended to read:

19 627.9408 Rules.--

20 (1) The department has authority to adopt rules
21 pursuant to ss. 120.536(1) and 120.54 to implement the
22 provisions of this part.

23 (2) The department may adopt by rule the provisions of
24 the Long-Term Care Insurance Model Regulation adopted by the
25 National Association of Insurance Commissioners in the second
26 quarter of the year 2000 which are not in conflict with the
27 Florida Insurance Code.

28 Section 34. Subsections (2) and (3) of section
29 400.0066, Florida Statutes, are repealed.

30
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705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 3, line 26, after the semicolon,

4

5 insert:

6 creating s. 409.221, F.S.; creating the
7 "Florida Consumer-Directed Care Act"; providing
8 legislative findings; providing legislative
9 intent; establishing the consumer-directed care
10 program; providing for consumer selection of
11 certain long-term care services and providers;
12 providing for interagency agreements among the
13 Agency for Health Care Administration and the
14 Department of Elderly Affairs, the Department
15 of Health, and the Department of Children and
16 Family Services; providing for program
17 eligibility and enrollment; providing
18 definitions; providing for consumer budget
19 allowances and purchasing guidelines;
20 specifying authorized services; providing roles
21 and responsibilities of consumers, the agency
22 and departments, and fiduciary intermediaries;
23 providing background screening requirements for
24 persons who render care under the program;
25 providing rulemaking authority of the agency
26 and departments; requiring the agency to apply
27 for federal waivers as necessary; requiring
28 ongoing program reviews and annual reports;
29 requiring the Agency for Health Care
30 Administration and the Department of Elderly
31 Affairs to submit a plan to the Governor and

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 Legislature for reducing nursing home bed days
2 funded under the Medicaid program; amending s.
3 408.034, F.S.; providing additional
4 requirements for the Agency for Health Care
5 Administration in determining the need for
6 additional nursing facility beds; amending s.
7 409.912, F.S.; authorizing the Agency for
8 Health Care Administration to contract with
9 vendors on a risk-sharing basis for in-home
10 physician services; requiring the Agency for
11 Health Care Administration to establish a
12 nursing facility preadmission screening program
13 through an interagency agreement with the
14 Department of Elderly Affairs; requiring an
15 annual report to the Legislature and the Office
16 of Long-Term Care Policy; creating s. 430.7031,
17 F.S.; requiring the Department of Elderly
18 Affairs and the Agency for Health Care
19 Administration to implement a nursing home
20 transition program; providing requirements for
21 the program; amending ss. 409.908, 430.708, and
22 641.386, F.S., relating to reimbursement of
23 Medicaid providers, certificates of need, and
24 agent licensing and appointment; conforming
25 cross references to changes made by the act;
26 amending s. 20.41, F.S.; providing for
27 administration of the State Long-Term Care
28 Ombudsman Council by the Department of Elderly
29 Affairs; amending s. 400.0063, F.S.; locating
30 the Office of the State Long-Term Care
31 Ombudsman in the department; providing for

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 appointment of the ombudsman by the Secretary
2 of Elderly Affairs; amending s. 400.0065, F.S.;
3 requiring the secretary's approval of staff for
4 the local ombudsman councils; deleting
5 requirement that the ombudsman prepare an
6 annual legislative budget request; revising
7 rulemaking authority; amending s. 400.0067,
8 F.S.; revising duties of the State Long-Term
9 Care Ombudsman Council; providing duties of the
10 department and secretary; amending s. 400.0069,
11 F.S.; increasing the maximum membership of the
12 local long-term care ombudsman councils;
13 amending s. 400.0071, F.S.; revising procedures
14 relating to complaints; amending s. 400.0087,
15 F.S.; revising provisions relating to agency
16 oversight; amending s. 400.0089, F.S.; revising
17 reporting responsibilities; requiring the State
18 Long-Term Care Ombudsman Council to publish
19 complaint information quarterly; amending s.
20 400.0091, F.S.; specifying training
21 requirements for employees of the Office of the
22 State Long-Term Care Ombudsman and its
23 volunteers; amending s. 400.179, F.S.;
24 providing an exemption from certain
25 requirements that the transferor of a nursing
26 facility maintain a bond; amending s. 400.141,
27 F.S.; requiring nursing home facilities to
28 maintain general and professional liability
29 insurance coverage; authorizing
30 state-designated teaching nursing homes to
31 demonstrate certain proof of financial

705-165AXK-08

Bill No. CS for SB 1276, 1st Eng.

Amendment No. ____ (for drafter's use only)

1 responsibility; amending s. 430.80, F.S.;

2 specifying the minimum proof of financial

3 responsibility required for state-designated

4 teaching nursing homes; amending 477.025, F.S.;

5 exempting certain facilities from a provision

6 of law requiring licensing as a cosmetology

7 salon; amending s. 627.9408, F.S.; authorizing

8 the department to adopt by rule certain

9 provisions of the Long-Term Care Insurance

10 Model Regulation, as adopted by the National

11 Association of Insurance Commissioners;

12 repealing s. 400.0066(2) and (3), F.S.,

13 relating to the Office of State Long-Term Care

14 Ombudsman; deleting a prohibition on

15 interference with the official duty of any

16 ombudsman staff or volunteers; deleting

17 reference to administrative support by the

18 Department of Elderly Affairs;

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