

By the Committees on Children and Families; Health, Aging and Long-Term Care; and Senator Brown-Waite

300-2293-02

1                                   A bill to be entitled  
2           An act relating to long-term care; creating s.  
3           409.221, F.S.; creating the "Florida  
4           Consumer-Directed Care Act"; providing  
5           legislative findings; providing legislative  
6           intent; establishing the consumer-directed care  
7           program; providing for consumer selection of  
8           certain long-term-care services and providers;  
9           providing for interagency agreements between  
10          the Agency for Health Care Administration and  
11          the Department of Elderly Affairs, the  
12          Department of Health, and the Department of  
13          Children and Family Services; providing for  
14          program eligibility and enrollment; providing  
15          definitions; providing for consumer budget  
16          allowances and purchasing guidelines;  
17          specifying authorized services; providing roles  
18          and responsibilities of consumers, the agency  
19          and departments, and fiduciary intermediaries;  
20          providing background screening requirements for  
21          persons who render care under the program;  
22          providing rulemaking authority of the agency  
23          and departments; requiring the agency to apply  
24          for federal waivers as necessary; requiring  
25          ongoing program reviews and annual reports;  
26          providing legislative findings and intent with  
27          respect to the needs of the state's elderly  
28          population; requiring the Agency for Health  
29          Care Administration and the Department of  
30          Elderly Affairs to submit a plan to the  
31          Governor and Legislature for reducing

1 nursing-home-bed days funded under the Medicaid  
2 program; amending s. 408.034, F.S.; providing  
3 additional requirements for the Agency for  
4 Health Care Administration in determining the  
5 need for additional nursing-facility beds;  
6 amending s. 409.912, F.S.; authorizing the  
7 Agency for Health Care Administration to  
8 contract with vendors on a risk-sharing basis  
9 for in-home physician services; requiring the  
10 Agency for Health Care Administration to  
11 establish a nursing facility preadmission  
12 screening program through an interagency  
13 agreement with the Department of Elderly  
14 Affairs; requiring an annual report to the  
15 Legislature and the Office of Long-Term-Care  
16 Policy; creating s. 430.041, F.S.; establishing  
17 the Office of Long-Term-Care Policy within the  
18 Department of Elderly Affairs; requiring the  
19 office to make recommendations for coordinating  
20 the services provided by state agencies;  
21 providing for the appointment of an advisory  
22 board to the Office of Long-Term-Care Policy;  
23 specifying membership of the advisory board;  
24 providing for reimbursement of per diem and  
25 travel expenses for members of the advisory  
26 board; requiring that the office submit an  
27 annual report to the Governor and Legislature;  
28 requiring assistance to the office by state  
29 agencies and universities; creating s.  
30 430.7031, F.S.; requiring the Department of  
31 Elderly Affairs and the Agency for Health Care

1 Administration to implement a nursing home  
2 transition program; providing requirements for  
3 the program; amending ss. 409.908, 430.708,  
4 641.386, F.S., relating to reimbursement of  
5 Medicaid providers, certificates of need, and  
6 agent licensing and appointment; conforming  
7 cross-references to changes made by the act;  
8 amending s. 400.0069, F.S.; increasing the  
9 maximum membership of the local long-term care  
10 ombudsman councils; amending s. 400.0089, F.S.;  
11 requiring the State Long-Term Care Ombudsman  
12 Council to publish complaint information  
13 quarterly; amending s. 400.0091, F.S.;  
14 specifying training requirements for employees  
15 of the Office of the State Long-Term Care  
16 Ombudsman and its volunteers; amending s.  
17 400.179, F.S.; providing an exemption from  
18 certain requirements that the transferor of a  
19 nursing facility maintain a bond; providing an  
20 effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:  
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24 Section 1. Section 409.221, Florida Statutes, is  
25 created to read:

26 409.221 Consumer-directed care program.--

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

29 (2) LEGISLATIVE FINDINGS.--The Legislature finds that  
30 alternatives to institutional care, such as in-home and  
31 community-based care, should be encouraged. The Legislature

1 finds that giving recipients of in-home and community-based  
2 services the opportunity to select the services they need and  
3 the providers they want, including family and friends,  
4 enhances their sense of dignity and autonomy. The Legislature  
5 also finds that providing consumers choice and control, as  
6 tested in current research and demonstration projects, has  
7 been beneficial and should be developed further and  
8 implemented statewide.

9 (3) LEGISLATIVE INTENT.--It is the intent of the  
10 Legislature to nurture the autonomy of those citizens of the  
11 state, of all ages, who have disabilities by providing the  
12 long-term care services they need in the least restrictive,  
13 appropriate setting. It is the intent of the Legislature to  
14 give such individuals more choices in and greater control over  
15 the purchased long-term care services they receive.

16 (4) CONSUMER-DIRECTED CARE.--

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

29 (b) Eligibility and enrollment.--Persons who are  
30 enrolled in one of the Medicaid home and community-based  
31 waiver programs and are able to direct their own care, or to

1 designate an eligible representative, may choose to  
2 participate in the consumer-directed care program.

3 (c) Definitions.--For purposes of this section, the  
4 term:

5 1. "Budget allowance" means the amount of money made  
6 available each month to a consumer to purchase needed  
7 long-term care services, based on the results of a functional  
8 needs assessment.

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

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

15 4. "Fiscal intermediary" means an entity approved by  
16 the agency that helps the consumer manage the consumer's  
17 budget allowance, retains the funds, processes employment  
18 information, if any, and tax information, reviews records to  
19 ensure correctness, writes paychecks to providers, and  
20 delivers paychecks to the consumer for distribution to  
21 providers and caregivers.

22 5. "Provider" means:

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

26 b. A consumer-employed caregiver for whom the consumer  
27 is the employer of record.

28 6. "Representative" means an uncompensated individual  
29 designated by the consumer to assist in managing the  
30 consumer's budget allowance and needed services.

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1           (d) Budget allowances.--Consumers enrolled in the  
2 program shall be given a monthly budget allowance based on the  
3 results of their assessed functional needs and the financial  
4 resources of the program. Consumers shall receive the budget  
5 allowance directly from an agency-approved fiscal  
6 intermediary. Each department shall develop purchasing  
7 guidelines, approved by the agency, to assist consumers in  
8 using the budget allowance to purchase needed, cost-effective  
9 services.

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

15           1. Personal care.

16           2. Homemaking and chores, including housework, meals,  
17 shopping, and transportation.

18           3. Home modifications and assistive devices which may  
19 increase the consumer's independence or make it possible to  
20 avoid institutional placement.

21           4. Assistance in taking self-administered medication.

22           5. Day care and respite care services, including those  
23 provided by nursing home facilities pursuant to s. 400.141(6)  
24 or by adult day care facilities licensed pursuant to s.  
25 400.554.

26           6. Personal care and support services provided in an  
27 assisted living facility.

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

- 1           1. In cases where a consumer is the employer of  
2 record, the consumer's roles and responsibilities include, but  
3 are not limited to, the following:  
4           a. Developing a job description.  
5           b. Selecting caregivers and submitting information for  
6 the background screening as required in s. 435.05.  
7           c. Communicating needs, preferences, and expectations  
8 about services being purchased.  
9           d. Providing the fiscal intermediary with all  
10 information necessary for provider payments and tax  
11 requirements.  
12           e. Ending the employment of an unsatisfactory  
13 caregiver.  
14           2. In cases where a consumer is not the employer of  
15 record, the consumer's roles and responsibilities include, but  
16 are not limited to, the following:  
17           a. Communicating needs, preferences, and expectations  
18 about services being purchased.  
19           b. Ending the services of an unsatisfactory provider.  
20           c. Providing the fiscal agent with all information  
21 necessary for provider payments and tax requirements.  
22           (g) Agency and departments roles and  
23 responsibilities.--The agency's and the departments' roles and  
24 responsibilities include, but are not limited to, the  
25 following:  
26           1. Assessing each consumer's functional needs, helping  
27 with the service plan, and providing ongoing assistance with  
28 the service plan.  
29           2. Offering the services of consultants who shall  
30 provide training, technical assistance, and support to the  
31 consumer.

1           3. Completing the background screening for providers.

2           4. Approving fiscal intermediaries.

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

6           (h) Fiscal intermediary roles and  
7 responsibilities.--The fiscal intermediary's roles and  
8 responsibilities include, but are not limited to, the  
9 following:

10           1. Providing recordkeeping services.

11           2. Retaining the consumer-directed care funds,  
12 processing employment and tax information, if any, reviewing  
13 records to ensure correctness, writing paychecks to providers,  
14 and delivering paychecks to the consumer for distribution.

15           (i) Background screening requirements.--All persons  
16 who render care under this section shall comply with the  
17 requirements of s. 435.05. Persons shall be excluded from  
18 employment pursuant to s. 435.06.

19           1. Persons excluded from employment may request an  
20 exemption from disqualification, as provided in s. 435.07.  
21 Persons not subject to certification or professional licensure  
22 may request an exemption from the agency. In considering a  
23 request for an exemption, the agency shall comply with the  
24 provisions of s. 435.07.

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

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

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1           1. The agency and the Departments of Elderly Affairs,  
2 Health, and Children and Family Services are authorized to  
3 adopt and enforce rules.

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

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

16           Section 2. The Legislature finds that the State of  
17 Florida does not have a comprehensive and effective strategy  
18 for economically and efficiently meeting the long-term-care  
19 needs of an increasingly elderly population; that multiple  
20 state agencies have responsibilities for oversight, planning,  
21 and operation of long-term-care programs; that long-term care  
22 is provided by a complex array of public and private entities  
23 delivering services; that there has not been a focus on  
24 evaluation of innovative and pilot projects and expansion of  
25 pilot projects that are successful; that the provision of  
26 long-term-care services has not been approached holistically;  
27 and that the state does not have a mechanism for ensuring that  
28 long-term-care programs are effectively and efficiently  
29 operated and coordinated to comply with the policies set out  
30 in Florida Statutes. It is therefore the intent of the  
31 Legislature to increase the rate of diversion of elderly

1 persons in need of long-term care to noninstitutional  
2 alternatives; to increase coordination, evaluation, and  
3 planning for the state's long-term-care system; to expand  
4 successful pilot programs; and to establish a nursing facility  
5 preadmission screening program.

6 Section 3. (1) Prior to December 1, 2002, the Agency  
7 for Health Care Administration in consultation with the  
8 Department of Elderly Affairs shall submit to the Governor,  
9 the President of the Senate, and the Speaker of the House of  
10 Representatives a plan to reduce the number of  
11 nursing-home-bed days purchased by the state Medicaid program  
12 and to replace such nursing home care with care provided in  
13 less costly alternative settings.

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

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

20 Section 4. Section 408.034, Florida Statutes, is  
21 amended to read:

22 408.034 Duties and responsibilities of agency;  
23 rules.--

24 (1) The agency is designated as the single state  
25 agency to issue, revoke, or deny certificates of need and to  
26 issue, revoke, or deny exemptions from certificate-of-need  
27 review in accordance with the district plans and present and  
28 future federal and state statutes. The agency is designated  
29 as the state health planning agency for purposes of federal  
30 law.

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1           (2) In the exercise of its authority to issue licenses  
2 to health care facilities and health service providers, as  
3 provided under chapters 393, 395, and parts II and VI of  
4 chapter 400, the agency may not issue a license to any health  
5 care facility, health service provider, hospice, or part of a  
6 health care facility which fails to receive a certificate of  
7 need or an exemption for the licensed facility or service.

8           (3) The agency shall establish, by rule, uniform need  
9 methodologies for health services and health facilities. In  
10 developing uniform need methodologies, the agency shall, at a  
11 minimum, consider the demographic characteristics of the  
12 population, the health status of the population, service use  
13 patterns, standards and trends, geographic accessibility, and  
14 market economics.

15           (4) Prior to determining that there is a need for  
16 additional community nursing-facility beds in any area of the  
17 state, the agency shall determine that the need cannot be met  
18 through the provision, enhancement, or expansion of home and  
19 community-based services. In determining such need, the agency  
20 shall examine nursing-home-placement patterns and demographic  
21 patterns of persons entering nursing homes and the  
22 availability of and effectiveness of existing home-based and  
23 community-based service delivery systems at meeting the  
24 long-term-care needs of the population. The agency shall  
25 recommend to the Office of Long-Term-Care Policy changes that  
26 could be made to existing home-based and community-based  
27 delivery systems to lessen the need for additional  
28 nursing-facility beds.

29           ~~(5)~~(4) The agency shall establish by rule a  
30 nursing-home-bed-need methodology that reduces the community  
31 nursing home bed need for the areas of the state where the

1 agency establishes pilot community diversion programs through  
2 the Title XIX aging waiver program.

3 (6)~~(5)~~ The agency may adopt rules necessary to  
4 implement ss. 408.031-408.045.

5 Section 5. Paragraph (f) of subsection (3) of section  
6 409.912, Florida Statutes, is amended, and present subsections  
7 (13) through (39) of that section are redesignated as  
8 subsections (14) through (40), respectively, and a new  
9 subsection (13) is added to that section, to read:

10 409.912 Cost-effective purchasing of health care.--The  
11 agency shall purchase goods and services for Medicaid  
12 recipients in the most cost-effective manner consistent with  
13 the delivery of quality medical care. The agency shall  
14 maximize the use of prepaid per capita and prepaid aggregate  
15 fixed-sum basis services when appropriate and other  
16 alternative service delivery and reimbursement methodologies,  
17 including competitive bidding pursuant to s. 287.057, designed  
18 to facilitate the cost-effective purchase of a case-managed  
19 continuum of care. The agency shall also require providers to  
20 minimize the exposure of recipients to the need for acute  
21 inpatient, custodial, and other institutional care and the  
22 inappropriate or unnecessary use of high-cost services. The  
23 agency may establish prior authorization requirements for  
24 certain populations of Medicaid beneficiaries, certain drug  
25 classes, or particular drugs to prevent fraud, abuse, overuse,  
26 and possible dangerous drug interactions. The Pharmaceutical  
27 and Therapeutics Committee shall make recommendations to the  
28 agency on drugs for which prior authorization is required. The  
29 agency shall inform the Pharmaceutical and Therapeutics  
30 Committee of its decisions regarding drugs subject to prior  
31 authorization.

1           (3) The agency may contract with:

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

19           (13)(a) The agency shall operate the Comprehensive  
20 Assessment and Review (CARES) nursing facility preadmission  
21 screening program to ensure that Medicaid payment for nursing  
22 facility care is made only for individuals whose conditions  
23 require such care and to ensure that long-term-care services  
24 are provided in the setting most appropriate to the needs of  
25 the person and in the most economical manner possible. The  
26 CARES program shall also ensure that individuals participating  
27 in Medicaid home and community-based waiver programs meet  
28 criteria for those programs, consistent with approved federal  
29 waivers.

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1           **(b) The agency shall operate the CARES program through**  
2 **an interagency agreement with the Department of Elderly**  
3 **Affairs.**

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

14           **(d) By January 1 of each year, the agency shall submit**  
15 **a report to the Legislature and the Office of Long-Term-Care**  
16 **Policy describing the operations of the CARES program. The**  
17 **report must describe:**

18                 **1. Rate of diversion to community alternative**  
19 **programs;**

20                 **2. CARES program staffing needs to achieve additional**  
21 **diversions;**

22                 **3. Reasons the program is unable to place individuals**  
23 **in less restrictive settings when such individuals desired**  
24 **such services and could have been served in such settings;**

25                 **4. Barriers to appropriate placement, including**  
26 **barriers due to policies or operations of other agencies or**  
27 **state-funded programs; and**

28                 **5. Statutory changes necessary to ensure that**  
29 **individuals in need of long-term-care services receive care in**  
30 **the least-restrictive environment.**

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1           Section 6. Section 430.041, Florida Statutes, is  
2 created to read:

3           430.041 Office of Long-Term-Care Policy.--

4           (1) There is established in the Department of Elderly  
5 Affairs the Office of Long-Term-Care Policy to evaluate the  
6 state's long-term-care service delivery system and make  
7 recommendations to increase the availability and the use of  
8 noninstitutional settings to provide care to the elderly and  
9 ensure coordination among the agencies responsible for the  
10 long-term-care continuum.

11           (2) The purpose of the Office of Long-Term-Care Policy  
12 is to:

13           (a) Ensure close communication and coordination among  
14 state agencies involved in developing and administering a more  
15 efficient and coordinated long-term-care service delivery  
16 system in this state;

17           (b) Identify duplication and unnecessary service  
18 provision in the long-term-care system and make  
19 recommendations to decrease inappropriate service provision;

20           (c) Review current programs providing long-term-care  
21 services to determine whether the programs are cost effective,  
22 of high quality, and operating efficiently and make  
23 recommendations to increase consistency and effectiveness in  
24 the state's long-term-care programs;

25           (d) Develop strategies for promoting and implementing  
26 cost-effective home and community-based services as an  
27 alternative to institutional care which coordinate and  
28 integrate the continuum of care needs of the elderly; and

29           (e) Assist the Office of Long-Term-Care Policy  
30 Advisory Council as necessary to help implement this section.

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1           (3) The Director of the Office of Long-Term-Care  
2 Policy shall be appointed by, and serve at the pleasure of,  
3 the Governor. The director shall report to, and be under the  
4 general supervision of, the Secretary of Elderly Affairs and  
5 shall not be subject to supervision by any other employee of  
6 the department.

7           (4) The Office of Long-Term-Care Policy shall have an  
8 advisory council, whose chair shall be the Director of the  
9 Office of Long-Term-Care Policy. The purposes of the advisory  
10 council are to provide assistance and direction to the office  
11 and to ensure that the appropriate state agencies are properly  
12 implementing recommendations from the office.

13           (a) The advisory council shall consist of:

14           1. A member of the Senate, appointed by the President  
15 of the Senate;

16           2. A member of the House of Representatives, appointed  
17 by the Speaker of the House of Representatives;

18           3. The Director of the Office of Long-Term-Care  
19 Policy;

20           4. The Secretary of Health Care Administration;

21           5. The Secretary of Elderly Affairs;

22           6. The Secretary of Children and Family Services;

23           7. The Secretary of Health;

24           8. The Executive Director of the Department of  
25 Veterans' Affairs;

26           9. A representative of the Florida Association of Area  
27 Agencies on Aging, appointed by the Governor;

28           10. A representative of the Florida Association of  
29 Aging Service Providers, appointed by the Governor;

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1           11. Three people possessing broad knowledge and  
2 experience in the delivery of long-term-care services,  
3 appointed by the Governor; and

4           12. Two representatives of people using long-term-care  
5 services, appointed by the Governor from groups representing  
6 elderly persons.

7           (b) Members shall serve without compensation, but are  
8 entitled to receive reimbursement for travel and per diem as  
9 provided in s. 112.061.

10           (c) The advisory council shall meet at the call of its  
11 chair or at the request of a majority of its members. During  
12 its first year of existence, the advisory council shall meet  
13 at least monthly.

14           (d) Members of the advisory council appointed by the  
15 Governor shall serve at the pleasure of the Governor and shall  
16 be appointed to 4-year staggered terms in accordance with s.  
17 20.052.

18           (5)(a) The Department of Elderly Affairs shall provide  
19 administrative support and services to the Office of  
20 Long-Term-Care Policy.

21           (b) The office shall call upon appropriate agencies of  
22 state government, including the centers on aging in the State  
23 University System, for assistance needed in discharging its  
24 duties.

25           (c) Each state agency represented on the Office of  
26 Long-Term-Care Policy Advisory Council shall make at least one  
27 employee available to work with the Office of Long-Term-Care  
28 Policy. All state agencies and universities shall assist the  
29 office in carrying out its responsibilities prescribed by this  
30 section.

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1           (d) Each state agency shall pay from its own funds any  
2 expenses related to its support of the Office of  
3 Long-Term-Care Policy and its participation on the advisory  
4 council. The Department of Elderly Affairs shall be  
5 responsible for expenses related to participation on the  
6 advisory council by members appointed by the Governor.

7           (6)(a) By December 1, 2002, the office shall submit to  
8 the advisory council a preliminary report of its findings and  
9 recommendations on improving the long-term-care continuum in  
10 this state. The report must contain recommendations and  
11 implementation proposals for policy changes, as well as  
12 legislative and funding recommendations that will make the  
13 system more effective and efficient. The report shall contain  
14 a specific plan for accomplishing the recommendations and  
15 proposals. Thereafter, the office shall revise and update the  
16 report annually and resubmit it to the advisory council for  
17 review and comments by November 1 of each year.

18           (b) The advisory council shall review and recommend  
19 any suggested changes to the preliminary report, and each  
20 subsequent annual update of the report, within 30 days after  
21 the receipt of the preliminary report. Suggested revisions,  
22 additions, or deletions shall be made to the Director of the  
23 Office of Long-Term-Care Policy.

24           (c) The office shall submit its final report, and each  
25 subsequent annual update of the report, to the Governor and  
26 the Legislature within 30 days after the receipt of any  
27 revisions, additions, or deletions suggested by the advisory  
28 council, or after the time such comments are due to the  
29 office.

30           Section 7. Section 430.7031, Florida Statutes, is  
31 created to read:

1           430.7031 Nursing home transition program.--The  
2 department and the Agency for Health Care Administration:

3           (1) Shall implement a system of care designed to  
4 assist individuals residing in nursing homes to regain  
5 independence and to move to less-costly settings.

6           (2) Shall collaboratively work to identify long-stay  
7 nursing home residents who are able to move to community  
8 placements, and to provide case management and supportive  
9 services to such individuals while they are in nursing homes  
10 to assist such individuals in moving to less-expensive and  
11 less-restrictive settings.

12           (3) Shall modify existing service delivery systems or  
13 develop new service delivery systems to economically and  
14 efficiently meet such individuals' care needs.

15           (4) Shall offer such individuals priority placement  
16 and services in all home-based and community-based care  
17 programs, and shall ensure that funds are available to provide  
18 services to individuals to whom services are offered.

19           (5) May seek federal waivers necessary to administer  
20 this section.

21           Section 8. Subsection (4) of section 409.908, Florida  
22 Statutes, is amended to read:

23           409.908 Reimbursement of Medicaid providers.--Subject  
24 to specific appropriations, the agency shall reimburse  
25 Medicaid providers, in accordance with state and federal law,  
26 according to methodologies set forth in the rules of the  
27 agency and in policy manuals and handbooks incorporated by  
28 reference therein. These methodologies may include fee  
29 schedules, reimbursement methods based on cost reporting,  
30 negotiated fees, competitive bidding pursuant to s. 287.057,  
31 and other mechanisms the agency considers efficient and

1 effective for purchasing services or goods on behalf of  
2 recipients. Payment for Medicaid compensable services made on  
3 behalf of Medicaid eligible persons is subject to the  
4 availability of moneys and any limitations or directions  
5 provided for in the General Appropriations Act or chapter 216.  
6 Further, nothing in this section shall be construed to prevent  
7 or limit the agency from adjusting fees, reimbursement rates,  
8 lengths of stay, number of visits, or number of services, or  
9 making any other adjustments necessary to comply with the  
10 availability of moneys and any limitations or directions  
11 provided for in the General Appropriations Act, provided the  
12 adjustment is consistent with legislative intent.

13 (4) Subject to any limitations or directions provided  
14 for in the General Appropriations Act, alternative health  
15 plans, health maintenance organizations, and prepaid health  
16 plans shall be reimbursed a fixed, prepaid amount negotiated,  
17 or competitively bid pursuant to s. 287.057, by the agency and  
18 prospectively paid to the provider monthly for each Medicaid  
19 recipient enrolled. The amount may not exceed the average  
20 amount the agency determines it would have paid, based on  
21 claims experience, for recipients in the same or similar  
22 category of eligibility. The agency shall calculate  
23 capitation rates on a regional basis and, beginning September  
24 1, 1995, shall include age-band differentials in such  
25 calculations. Effective July 1, 2001, the cost of exempting  
26 statutory teaching hospitals, specialty hospitals, and  
27 community hospital education program hospitals from  
28 reimbursement ceilings and the cost of special Medicaid  
29 payments shall not be included in premiums paid to health  
30 maintenance organizations or prepaid health care plans. Each  
31 rate semester, the agency shall calculate and publish a

1 Medicaid hospital rate schedule that does not reflect either  
2 special Medicaid payments or the elimination of rate  
3 reimbursement ceilings, to be used by hospitals and Medicaid  
4 health maintenance organizations, in order to determine the  
5 Medicaid rate referred to in ss. 409.912(17)~~409.912(16)~~,  
6 409.9128(5), and 641.513(6).

7 Section 9. Section 430.708, Florida Statutes, is  
8 amended to read:

9 430.708 Certificate of need.--To ensure that Medicaid  
10 community diversion pilot projects result in a reduction in  
11 the projected average monthly nursing home caseload, the  
12 agency shall, in accordance with the provisions of s.  
13 408.034(5)~~s. 408.034(4)~~:

14 (1) Reduce the projected nursing home bed need in each  
15 certificate-of-need batching cycle in the community diversion  
16 pilot project areas.

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

20 (3) Adopt rules to reduce the number of beds in  
21 Medicaid-participating nursing homes eligible for Medicaid,  
22 through a Medicaid-selective contracting process or some other  
23 appropriate method.

24 (4) Determine the feasibility of increasing the  
25 nursing home occupancy threshold used in determining nursing  
26 home bed needs under the certificate-of-need process.

27 Section 10. Subsection (4) of section 641.386, Florida  
28 Statutes, is amended to read:

29 641.386 Agent licensing and appointment required;  
30 exceptions.--

31

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

12           Section 11. Subsection (4) of section 400.0069,  
13 Florida Statutes, is amended to read:

14           400.0069 Local long-term care ombudsman councils;  
15 duties; membership.--

16           (4) Each local ombudsman council shall be composed of  
17 no less than 15 members and no more than 40 ~~30~~ members from  
18 the local planning and service area, to include the following:  
19 one medical or osteopathic physician whose practice includes  
20 or has included a substantial number of geriatric patients and  
21 who may have limited practice in a long-term care facility;  
22 one registered nurse who has geriatric experience, if  
23 possible; one licensed pharmacist; one registered dietitian;  
24 at least six nursing home residents or representative consumer  
25 advocates for nursing home residents; at least three residents  
26 of assisted living facilities or adult family-care homes or  
27 three representative consumer advocates for long-term care  
28 facility residents; one attorney; and one professional social  
29 worker. In no case shall the medical director of a long-term  
30 care facility or an employee of the Agency for Health Care  
31 Administration, the Department of Children and Family

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

8 Section 12. Section 400.0089, Florida Statutes, is  
9 amended to read:

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

28 Section 13. Section 400.0091, Florida Statutes, is  
29 amended to read:

30 400.0091 Training.--The ombudsman shall provide  
31 appropriate training to all employees of the Office of State

1 Long-Term Care Ombudsman and to the state and local long-term  
2 care ombudsman councils, including all unpaid volunteers. All  
3 volunteers and appropriate employees of the Office of the  
4 State Long-Term Care Ombudsman must be given a minimum of 20  
5 hours of training upon employment or enrollment as a volunteer  
6 and 10 hours of continuing education annually thereafter.  
7 Training must cover, at a minimum, guardianships and powers of  
8 attorney, medication administration, care and medication of  
9 residents with dementia and Alzheimer's disease, accounting  
10 for residents' funds, discharge rights and responsibilities,  
11 and cultural sensitivity.No employee, officer, or  
12 representative of the office or of the state or local  
13 long-term care ombudsman councils, other than the ombudsman,  
14 may carry out any authorized ombudsman duty or responsibility  
15 unless the person has received the training required by this  
16 section and has been approved by the ombudsman as qualified to  
17 carry out ombudsman activities on behalf of the office or the  
18 state or local long-term care ombudsman councils.

19 Section 14. Paragraph (d) of subsection (5) of section  
20 400.179, Florida Statutes, is amended to read:

21 400.179 Sale or transfer of ownership of a nursing  
22 facility; liability for Medicaid underpayments and  
23 overpayments.--

24 (5) Because any transfer of a nursing facility may  
25 expose the fact that Medicaid may have underpaid or overpaid  
26 the transferor, and because in most instances, any such  
27 underpayment or overpayment can only be determined following a  
28 formal field audit, the liabilities for any such underpayments  
29 or overpayments shall be as follows:

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



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

8           2. The leasehold operator may meet the bond  
9 requirement through other arrangements acceptable to the  
10 department.

11           3. All existing nursing facility licensees, operating  
12 the facility as a leasehold, shall acquire, maintain, and  
13 provide proof to the agency of the 30-month bond required in  
14 subparagraph 1., above, on and after July 1, 1993, for each  
15 license renewal.

16           4. It shall be the responsibility of all nursing  
17 facility operators, operating the facility as a leasehold, to  
18 renew the 30-month bond and to provide proof of such renewal  
19 to the agency annually at the time of application for license  
20 renewal.

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

1 or required under s. 159.30 by a county or municipality is not  
2 a leasehold for purposes of this paragraph and is not subject  
3 to the bond requirement of this paragraph.

4 Section 15. This act shall take effect July 1, 2002.

5  
6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
7 COMMITTEE SUBSTITUTE FOR  
8 CS for Senate Bill 1838

9 Allows the Agency for Health Care Administration to contract  
10 with an entity, on a risk sharing basis, to provide in-home  
11 physician services for the purpose of testing the cost  
12 effectiveness of enhanced home-based medical care to Medicaid  
13 recipients with degenerative neurological diseases and other  
14 diseases or disabling conditions associated with high costs to  
15 the Medicaid program.

16 Expands the membership of the Office of Long-Term Care Policy  
17 Advisory Council.

18 Increases the maximum number of State Long-Term Care Ombudsman  
19 Council members from 30 to 40.

20 Requires the State Long-Term Care Ombudsman Council to publish  
21 quarterly reports regarding the number and types of complaints  
22 received by the long-term care ombudsman program.

23 Requires volunteers and appropriate employees of the Office of  
24 the State Long-Term Care Ombudsman to be given a minimum of 20  
25 hours of training upon employment or enrollment as a volunteer  
26 and a minimum of 10 hours of training annually.

27 Specifies that a lease agreement required as a condition of  
28 bond financing or refinancing under s. 154.213, F.S., or s.  
29 159.30, F.S., is not subject to the bond requirements of s.  
30 400.179(5)(d), F.S.