

705-165AXI-08 Bill No. CS for CS for SB 596, 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)**

Remove everything after the enacting clause

and insert:

Section 1. 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

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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

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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

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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.

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- 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

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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

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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 2. (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 3. Section 408.034, Florida Statutes, is  
29 amended to read:

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

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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



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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 4. 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

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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

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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

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

7 430.041 Office of Long-Term Care Policy.--

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

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

17 (a) Ensure close communication and coordination among  
18 state agencies involved in developing and administering a more  
19 efficient and coordinated long-term care service delivery  
20 system in this state.

21 (b) Identify duplication and unnecessary service  
22 provision in the long-term care system and make  
23 recommendations to decrease inappropriate service provision.

24 (c) Review current programs providing long-term care  
25 services to determine whether the programs are cost effective,  
26 of high quality, and operating efficiently and make  
27 recommendations to increase consistency and effectiveness in  
28 the state's long-term care programs.

29 (d) Develop strategies for promoting and implementing  
30 cost-effective home and community-based services as an  
31 alternative to institutional care which coordinate and

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- 1 integrate the continuum of care needs of the elderly.  
2 (e) Assist the Office of Long-Term Care Policy  
3 Advisory Council as necessary to help implement this section.  
4 (3) The Director of the Office of Long-Term Care  
5 Policy shall be appointed by, and serve at the pleasure of,  
6 the Governor. The director shall report to, and be under the  
7 general supervision of, the Secretary of Elderly Affairs and  
8 shall not be subject to supervision by any other employee of  
9 the department.  
10 (4) The Office of Long-Term Care Policy shall have an  
11 advisory council, whose chair shall be the Director of the  
12 Office of Long-Term Care Policy. The purposes of the advisory  
13 council are to provide assistance and direction to the office  
14 and to ensure that the appropriate state agencies are properly  
15 implementing recommendations from the office.  
16 (a) The advisory council shall consist of:  
17 1. A member of the Senate, appointed by the President  
18 of the Senate.  
19 2. A member of the House of Representatives, appointed  
20 by the Speaker of the House of Representatives.  
21 3. The Director of the Office of Long-Term Care  
22 Policy.  
23 4. The Secretary of Health Care Administration.  
24 5. The Secretary of Elderly Affairs.  
25 6. The Secretary of Children and Family Services.  
26 7. The Secretary of Health.  
27 8. The Executive Director of the Department of  
28 Veterans' Affairs.  
29 9. A representative of the Florida Association of Area  
30 Agencies on Aging, appointed by the Governor.  
31 10. A representative of the Florida Association of

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1 Aging Service Providers, appointed by the Governor.

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

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

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

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

15 (d) Members of the advisory council appointed by the  
16 Governor shall serve at the pleasure of the Governor and shall  
17 be appointed to 4-year staggered terms in accordance with s.  
18 20.052.

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

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

26 (c) Each state agency represented on the Office of  
27 Long-Term Care Policy Advisory Council shall make at least one  
28 employee available to work with the Office of Long-Term Care  
29 Policy. All state agencies and universities shall assist the  
30 office in carrying out its responsibilities prescribed by this  
31 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 Long-Term  
3 Care Policy and its participation on the advisory council. The  
4 Department of Elderly Affairs shall be responsible for  
5 expenses related to participation on the advisory council by  
6 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 6. Section 430.7031, Florida Statutes, is  
31 created to read:

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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 7. 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



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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

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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 8. 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 9. Subsection (4) of section 641.386, Florida  
28 Statutes, is amended to read:

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

31 (4) All agents and health maintenance organizations

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

11 Section 10. Subsection (4) of section 20.41, Florida  
12 Statutes, is amended to read:

13 20.41 Department of Elderly Affairs.--There is created  
14 a Department of Elderly Affairs.

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

24 Section 11. Subsection (1) and paragraph (b) of  
25 subsection (2) of section 400.0063, Florida Statutes, are  
26 amended to read:

27 400.0063 Establishment of Office of State Long-Term  
28 Care Ombudsman; designation of ombudsman and legal advocate.--

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

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1 (2)  
2 (b) The State Long-Term Care Ombudsman shall be  
3 appointed by and shall serve at the pleasure of the Secretary  
4 of Elderly Affairs ~~State Long-Term Care Ombudsman Council~~. No  
5 person who has a conflict of interest, or has an immediate  
6 family member who has a conflict of interest, may be involved  
7 in the designation of the ombudsman.

8 Section 12. Paragraphs (c) and (f) of subsection (2)  
9 and subsection (3) of section 400.0065, Florida Statutes, are  
10 amended to read:

11 400.0065 State Long-Term Care Ombudsman; duties and  
12 responsibilities; conflict of interest.--

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

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

25 ~~(f) Annually prepare a budget request that shall be~~  
26 ~~submitted to the Governor by the department for transmittal to~~  
27 ~~the Legislature.~~

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

29 (a) Have a direct involvement in the licensing or  
30 certification of, or an ownership or investment interest in, a  
31 long-term care facility or a provider of a long-term care

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1 service.

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

4 (c) Receive, or have a right to receive, directly or  
5 indirectly, remuneration, in cash or in kind, under a  
6 compensation agreement with the owner or operator of a  
7 long-term care facility.

8  
9 The Department of Elderly Affairs, ~~in consultation with the~~  
10 ~~ombudsman~~, shall adopt rules to establish procedures to  
11 identify and eliminate conflicts of interest as described in  
12 this subsection.

13 Section 13. Paragraphs (c), (d), (f), and (g) of  
14 subsection (2) and paragraph (b) of subsection (3) of section  
15 400.0067, Florida Statutes, are amended to read:

16 400.0067 Establishment of State Long-Term Care  
17 Ombudsman Council; duties; membership.--

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

19 (c) Assist the ombudsman to discover, investigate, and  
20 determine the existence of abuse or neglect in any long-term  
21 care facility. ~~and to develop procedures, in consultation with~~  
22 ~~The Department of Elderly Affairs shall develop procedures,~~  
23 relating to such investigations. Investigations may consist,  
24 in part, of one or more onsite administrative inspections.

25 (d) Assist the ombudsman in eliciting, receiving,  
26 responding to, and resolving complaints made by or on behalf  
27 of long-term care facility residents and in developing  
28 ~~procedures, in consultation with the Department of Elderly~~  
29 ~~Affairs,~~ relating to the receipt and resolution of such  
30 complaints. The secretary shall approve all such procedures.

31 ~~(f) Be authorized to call upon appropriate agencies of~~

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1 ~~state government for such professional assistance as may be~~  
2 ~~needed in the discharge of its duties, including assistance~~  
3 ~~from the adult protective services program of the Department~~  
4 ~~of Children and Family Services.~~

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

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

23 2. Evaluate the problems experienced by residents of  
24 long-term care facilities.

25 3. Contain recommendations for improving the quality  
26 of life of the residents and for protecting the health,  
27 safety, welfare, and rights of the residents.

28 4. Analyze the success of the ombudsman program during  
29 the preceding year and identify the barriers that prevent the  
30 optimal operation of the program. The report of the program's  
31 successes shall also address the relationship between the

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1 state long-term care ombudsman program, the Department of  
2 Elderly Affairs, the Agency for Health Care Administration,  
3 and the Department of Children and Family Services, and an  
4 assessment of how successfully the state long-term care  
5 ombudsman program has carried out its responsibilities under  
6 the Older Americans Act.

7 5. Provide policy and regulatory and legislative  
8 recommendations to solve identified problems; resolve  
9 residents' complaints; improve the quality of care and life of  
10 the residents; protect the health, safety, welfare, and rights  
11 of the residents; and remove the barriers to the optimal  
12 operation of the state long-term care ombudsman program.

13 6. Contain recommendations from the local ombudsman  
14 councils regarding program functions and activities.

15 7. Include a report on the activities of the legal  
16 advocate and other legal advocates acting on behalf of the  
17 local and state councils.

18 (3)

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

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

26 3. If the Governor's appointments are not made within  
27 60 days after the ombudsman submits the list, the ombudsman,  
28 in consultation with the secretary ~~State Long-Term Care~~  
29 ~~Ombudsman Council~~, shall appoint three members, one of whom  
30 must be over 60 years of age.

31 Section 14. Subsection (4) of section 400.0069,

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1 Florida Statutes, is amended to read:

2 400.0069 Local long-term care ombudsman councils;  
3 duties; membership.--

4 (4) Each local ombudsman council shall be composed of  
5 no less than 15 members and no more than 40 ~~30~~ members from  
6 the local planning and service area, to include the following:  
7 one medical or osteopathic physician whose practice includes  
8 or has included a substantial number of geriatric patients and  
9 who may have limited practice in a long-term care facility;  
10 one registered nurse who has geriatric experience, if  
11 possible; one licensed pharmacist; one registered dietitian;  
12 at least six nursing home residents or representative consumer  
13 advocates for nursing home residents; at least three residents  
14 of assisted living facilities or adult family-care homes or  
15 three representative consumer advocates for long-term care  
16 facility residents; one attorney; and one professional social  
17 worker. In no case shall the medical director of a long-term  
18 care facility or an employee of the Agency for Health Care  
19 Administration, the Department of Children and Family  
20 Services, or the Department of Elderly Affairs serve as a  
21 member or as an ex officio member of a council. Each member  
22 of the council shall certify that neither the council member  
23 nor any member of the council member's immediate family has  
24 any conflict of interest pursuant to subsection (10). Local  
25 ombudsman councils are encouraged to recruit council members  
26 who are 60 years of age or older.

27 Section 15. Subsection (1) of section 400.0071,  
28 Florida Statutes, is amended to read:

29 400.0071 Complaint procedures.--

30 (1) The state ombudsman council shall recommend to the  
31 ombudsman and the secretary ~~establish~~ state and local



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1 procedures for receiving complaints against a nursing home or  
2 long-term care facility or its employee. The procedures shall  
3 be implemented after the approval of the ombudsman and the  
4 secretary.

5 Section 16. Subsections (1) and (2) of section  
6 400.0087, Florida Statutes, are amended to read:

7 400.0087 Agency oversight.--

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

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

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

27 400.0089 Agency reports.--~~The State Long-Term Care~~  
28 ~~Ombudsman Council, shall, in cooperation with the Department~~  
29 of Elderly Affairs shall, maintain a statewide uniform  
30 reporting system to collect and analyze data relating to  
31 complaints and conditions in long-term care facilities and to

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1 residents, for the purpose of identifying and resolving  
2 significant problems. The department and the State Long-Term  
3 Care Ombudsman Council shall submit such data as part of its  
4 annual report required pursuant to s. 400.0067(2)(g) to the  
5 Agency for Health Care Administration, the Department of  
6 Children and Family Services, the Florida Statewide Advocacy  
7 Council, the Advocacy Center for Persons with Disabilities,  
8 the Commissioner for the United States Administration on  
9 Aging, the National Ombudsman Resource Center, and any other  
10 state or federal entities that the ombudsman determines  
11 appropriate. The State Long-Term Care Ombudsman Council shall  
12 publish quarterly and make readily available information  
13 pertaining to the number and types of complaints received by  
14 the long-term care ombudsman program.

15 Section 18. Section 400.0091, Florida Statutes, is  
16 amended to read:

17 400.0091 Training.--The ombudsman shall provide  
18 appropriate training to all employees of the Office of State  
19 Long-Term Care Ombudsman and to the state and local long-term  
20 care ombudsman councils, including all unpaid volunteers. All  
21 volunteers and appropriate employees of the Office of the  
22 State Long-Term Care Ombudsman must be given a minimum of 20  
23 hours of training upon employment or enrollment as a volunteer  
24 and 10 hours of continuing education annually thereafter.  
25 Training must cover, at a minimum, guardianships and powers of  
26 attorney, medication administration, care and medication of  
27 residents with dementia and Alzheimer's disease, accounting  
28 for residents' funds, discharge rights and responsibilities,  
29 and cultural sensitivity.No employee, officer, or  
30 representative of the office or of the state or local  
31 long-term care ombudsman councils, other than the ombudsman,

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1 may carry out any authorized ombudsman duty or responsibility  
2 unless the person has received the training required by this  
3 section and has been approved by the ombudsman as qualified to  
4 carry out ombudsman activities on behalf of the office or the  
5 state or local long-term care ombudsman councils.

6 Section 19. Paragraph (d) of subsection (5) of section  
7 400.179, Florida Statutes, is amended to read:

8 400.179 Sale or transfer of ownership of a nursing  
9 facility; liability for Medicaid underpayments and  
10 overpayments.--

11 (5) Because any transfer of a nursing facility may  
12 expose the fact that Medicaid may have underpaid or overpaid  
13 the transferor, and because in most instances, any such  
14 underpayment or overpayment can only be determined following a  
15 formal field audit, the liabilities for any such underpayments  
16 or overpayments shall be as follows:

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

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

26 2. The leasehold operator may meet the bond  
27 requirement through other arrangements acceptable to the  
28 department.

29 3. All existing nursing facility licensees, operating  
30 the facility as a leasehold, shall acquire, maintain, and  
31 provide proof to the agency of the 30-month bond required in

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1 subparagraph 1., above, on and after July 1, 1993, for each  
2 license renewal.

3 4. It shall be the responsibility of all nursing  
4 facility operators, operating the facility as a leasehold, to  
5 renew the 30-month bond and to provide proof of such renewal  
6 to the agency annually at the time of application for license  
7 renewal.

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

22 Section 20. Subsection (1) of section 477.025, Florida  
23 Statutes, is amended, and subsection (11) is added to said  
24 section, to read:

25 477.025 Cosmetology salons; specialty salons;  
26 requisites; licensure; inspection; mobile cosmetology  
27 salons.--

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

31 (11) Facilities licensed under part II or part III of

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1 chapter 400 shall be exempt from the provisions of this  
2 section and a cosmetologist licensed pursuant to s. 477.019  
3 may provide salon services exclusively for facility residents.

4 Section 21. Section 627.9408, Florida Statutes, is  
5 amended to read:

6 627.9408 Rules.--

7 (1) The department has authority to adopt rules  
8 pursuant to ss. 120.536(1) and 120.54 to implement the  
9 provisions of this part.

10 (2) The department may adopt by rule the provisions of  
11 the Long-Term Care Insurance Model Regulation adopted by the  
12 National Association of Insurance Commissioners in the second  
13 quarter of the year 2000 which are not in conflict with the  
14 Florida Insurance Code.

15 Section 22. Subsections (2) and (3) of section  
16 400.0066, Florida Statutes, are repealed.

17 Section 23. Section 65 of chapter 2001-45, Laws of  
18 Florida, is repealed.

19 Section 24. This act shall take effect July 1, 2002.

20  
21

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

23 And the title is amended as follows:

24 remove: the entire title

25

26 and insert:

27 A bill to be entitled  
28 An act relating to long-term care; creating s.  
29 409.221, F.S.; creating the "Florida  
30 Consumer-Directed Care Act"; providing  
31 legislative findings; providing legislative

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1 intent; establishing the consumer-directed care  
2 program; providing for consumer selection of  
3 certain long-term care services and providers;  
4 providing for interagency agreements among the  
5 Agency for Health Care Administration and the  
6 Department of Elderly Affairs, the Department  
7 of Health, and the Department of Children and  
8 Family Services; providing for program  
9 eligibility and enrollment; providing  
10 definitions; providing for consumer budget  
11 allowances and purchasing guidelines;  
12 specifying authorized services; providing roles  
13 and responsibilities of consumers, the agency  
14 and departments, and fiduciary intermediaries;  
15 providing background screening requirements for  
16 persons who render care under the program;  
17 providing rulemaking authority of the agency  
18 and departments; requiring the agency to apply  
19 for federal waivers as necessary; requiring  
20 ongoing program reviews and annual reports;  
21 requiring the Agency for Health Care  
22 Administration and the Department of Elderly  
23 Affairs to submit a plan to the Governor and  
24 Legislature for reducing nursing home bed days  
25 funded under the Medicaid program; amending s.  
26 408.034, F.S.; providing additional  
27 requirements for the Agency for Health Care  
28 Administration in determining the need for  
29 additional nursing facility beds; amending s.  
30 409.912, F.S.; authorizing the Agency for  
31 Health Care Administration to contract with

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1 vendors on a risk-sharing basis for in-home  
2 physician services; requiring the Agency for  
3 Health Care Administration to establish a  
4 nursing facility preadmission screening program  
5 through an interagency agreement with the  
6 Department of Elderly Affairs; requiring an  
7 annual report to the Legislature and the Office  
8 of Long-Term Care Policy; creating s. 430.041,  
9 F.S.; establishing the Office of Long-Term Care  
10 Policy within the Department of Elderly  
11 Affairs; requiring the office to make  
12 recommendations for coordinating the services  
13 provided by state agencies; providing for the  
14 appointment of a director and an advisory  
15 council to the Office of Long-Term Care Policy;  
16 specifying membership and duties of the  
17 director and advisory council; providing for  
18 reimbursement of per diem and travel expenses  
19 for members of the advisory council; requiring  
20 that the office submit an annual report to the  
21 Governor and Legislature; requiring assistance  
22 to the office by state agencies and  
23 universities; creating s. 430.7031, F.S.;  
24 requiring the Department of Elderly Affairs and  
25 the Agency for Health Care Administration to  
26 implement a nursing home transition program;  
27 providing requirements for the program;  
28 amending ss. 409.908, 430.708, and 641.386,  
29 F.S., relating to reimbursement of Medicaid  
30 providers, certificates of need, and agent  
31 licensing and appointment; conforming cross

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1 references to changes made by the act; amending  
2 s. 20.41, F.S.; providing for administration of  
3 the State Long-Term Care Ombudsman Council by  
4 the Department of Elderly Affairs; amending s.  
5 400.0063, F.S.; locating the Office of the  
6 State Long-Term Care Ombudsman in the  
7 department; providing for appointment of the  
8 ombudsman by the Secretary of Elderly Affairs;  
9 amending s. 400.0065, F.S.; requiring the  
10 secretary's approval of staff for the local  
11 ombudsman councils; deleting requirement that  
12 the ombudsman prepare an annual legislative  
13 budget request; revising rulemaking authority;  
14 amending s. 400.0067, F.S.; revising duties of  
15 the State Long-Term Care Ombudsman Council;  
16 providing duties of the department and  
17 secretary; amending s. 400.0069, F.S.;  
18 increasing the maximum membership of the local  
19 long-term care ombudsman councils; amending s.  
20 400.0071, F.S.; revising procedures relating to  
21 complaints; amending s. 400.0087, F.S.;  
22 revising provisions relating to agency  
23 oversight; amending s. 400.0089, F.S.; revising  
24 reporting responsibilities; requiring the State  
25 Long-Term Care Ombudsman Council to publish  
26 complaint information quarterly; amending s.  
27 400.0091, F.S.; specifying training  
28 requirements for employees of the Office of the  
29 State Long-Term Care Ombudsman and its  
30 volunteers; amending s. 400.179, F.S.;  
31 providing an exemption from certain



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1 requirements that the transferor of a nursing  
2 facility maintain a bond; amending s. 477.025,  
3 F.S.; exempting certain facilities from a  
4 provision of law requiring licensing as a  
5 cosmetology salon; amending s. 627.9408, F.S.;  
6 authorizing the department to adopt by rule  
7 certain provisions of the Long-Term Care  
8 Insurance Model Regulation, as adopted by the  
9 National Association of Insurance  
10 Commissioners; repealing s. 400.0066(2) and  
11 (3), F.S., relating to the Office of State  
12 Long-Term Care Ombudsman; deleting a  
13 prohibition on interference with the official  
14 duty of any ombudsman staff or volunteers;  
15 deleting reference to administrative support by  
16 the Department of Elderly Affairs; repealing s.  
17 65, ch. 2001-45, Laws of Florida, relating to  
18 office space for the Office of State Long-Term  
19 Care Ombudsman; providing an effective date.

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