

By the Committees on Appropriations; and Health, Aging and Long-Term Care

309-2073-02

1 A bill to be entitled
2 An act relating to long-term care; providing
3 legislative findings and intent with respect to
4 the needs of the state's elderly population;
5 requiring the Agency for Health Care
6 Administration and the Department of Elderly
7 Affairs to submit a plan to the Governor and
8 Legislature for reducing nursing-home-bed days
9 funded under the Medicaid program; amending s.
10 408.034, F.S.; providing additional
11 requirements for the Agency for Health Care
12 Administration in determining the need for
13 additional nursing-facility beds; amending s.
14 409.912; requiring the Agency for Health Care
15 Administration to establish a nursing facility
16 preadmission screening program; authorizing the
17 agency to operate the program by contract;
18 requiring an annual report to the Legislature
19 and the Office of Long-Term-Care Policy;
20 creating s. 430.041, F.S.; establishing the
21 Office of Long-Term-Care Policy within the
22 Department of Elderly Affairs; requiring the
23 office to make recommendations for coordinating
24 the services provided by state agencies;
25 providing for the appointment of an advisory
26 board to the Office of Long-Term-Care Policy;
27 specifying membership in the advisory board;
28 providing for reimbursement of per diem and
29 travel expenses for members of the advisory
30 board; requiring that the office submit an
31 annual report to the Governor and Legislature;

1 requiring assistance to the office by state
2 agencies and universities; amending s. 430.204,
3 F.S.; providing certain restrictions on
4 community-care-for-the-elderly services;
5 creating s. 430.7031, F.S.; requiring the
6 Department of Elderly Affairs and the Agency
7 for Health Care Administration to implement a
8 nursing home transition program; providing
9 requirements for the program; amending ss.
10 409.908, 430.708, 641.386, F.S., relating to
11 reimbursement of Medicaid providers,
12 certificates of need, and agent licensing and
13 appointment; conforming cross-references to
14 changes made by the act; amending s. 400.0069,
15 F.S.; increasing the maximum membership of the
16 local long-term care ombudsman councils;
17 amending s. 400.0089, F.S.; requiring the State
18 Long-Term Care Ombudsman Council to publish
19 complaint information quarterly; amending s.
20 400.0091, F.S.; specifying training
21 requirements for employees of the Office of the
22 State Long-Term Care Ombudsman and its
23 volunteers; providing an effective date.

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25 Be It Enacted by the Legislature of the State of Florida:

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27 Section 1. The Legislature finds that the State of
28 Florida does not have a comprehensive and effective strategy
29 for economically and efficiently meeting the long-term-care
30 needs of an increasingly elderly population; that multiple
31 state agencies have responsibilities for oversight, planning,

1 and operation of long-term-care programs; that long-term care
2 is provided by a complex array of public and private entities
3 delivering services; that there has not been a focus on
4 evaluation of innovative and pilot projects and expansion of
5 pilot projects that are successful; that the provision of
6 long-term-care services has not been approached holistically;
7 and that the state does not have a mechanism for ensuring that
8 long-term-care programs are effectively and efficiently
9 operated and coordinated to comply with the policies set out
10 in Florida Statutes. It is therefore the intent of the
11 Legislature to increase the rate of diversion of elderly
12 persons in need of long-term care to noninstitutional
13 alternatives; to increase coordination, evaluation, and
14 planning for the state's long-term-care system; to expand
15 successful pilot programs; and to establish a nursing facility
16 preadmission screening program.

17 Section 2. (1) Prior to December 1, 2002, the Agency
18 for Health Care Administration in consultation with the
19 Department of Elderly Affairs shall submit to the Governor,
20 the President of the Senate, and the Speaker of the House of
21 Representatives a plan to reduce the number of
22 nursing-home-bed days purchased by the state Medicaid program
23 and to replace such nursing home care with care provided in
24 less costly alternative settings.

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

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

31

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

3 408.034 Duties and responsibilities of agency;
4 rules.--

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

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

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

26 (4) Prior to determining that there is a need for
27 additional community nursing-facility beds in any area of the
28 state, the agency shall determine that the need cannot be met
29 through the provision, enhancement, or expansion of home and
30 community-based services. In determining such need, the agency
31 shall examine nursing-home-placement patterns and demographic

1 patterns of persons entering nursing homes and the
2 availability of and effectiveness of existing home-based and
3 community-based service delivery systems at meeting the
4 long-term-care needs of the population. The agency shall
5 recommend to the Office of Long-Term-Care Policy changes that
6 could be made to existing home-based and community-based
7 delivery systems to lessen the need for additional
8 nursing-facility beds.

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

14 (6)~~(5)~~ The agency may adopt rules necessary to
15 implement ss. 408.031-408.045.

16 Section 4. Present subsections (13) through (39) of
17 section 409.912, Florida Statutes, are redesignated as
18 subsections (14) through (40) and a new subsection (13) is
19 added to that section to read:

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

1 | inappropriate or unnecessary use of high-cost services. The
2 | agency may establish prior authorization requirements for
3 | certain populations of Medicaid beneficiaries, certain drug
4 | classes, or particular drugs to prevent fraud, abuse, overuse,
5 | and possible dangerous drug interactions. The Pharmaceutical
6 | and Therapeutics Committee shall make recommendations to the
7 | agency on drugs for which prior authorization is required. The
8 | agency shall inform the Pharmaceutical and Therapeutics
9 | Committee of its decisions regarding drugs subject to prior
10 | authorization.

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

22 | (b) The agency may operate the CARES program using its
23 | own staff or may contract with another state agency or other
24 | provider. If the agency contracts for the operation of the
25 | program, the agency must maintain policy control of all
26 | operations of the program, including the criteria applied and
27 | forms used, and perform regular monitoring to assure effective
28 | and efficient operation of the program and ensure that the
29 | operation of the program is consistent with state and federal
30 | law and rules.

31 |

1 (c) The agency shall develop performance standards for
2 the CARES program.

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

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

17 1. Rate of diversion to community alternative
18 programs;

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

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

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

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

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

1 430.041 Office of Long-Term-Care Policy.--
2 (1) There is established in the Department of Elderly
3 Affairs the Office of Long-Term-Care Policy to evaluate the
4 state's long-term-care service delivery system and make
5 recommendations to increase the availability and the use of
6 noninstitutional settings to provide care to the elderly and
7 ensure coordination among the agencies responsible for the
8 long-term-care continuum.
9 (2) The purpose of the Office of Long-Term-Care Policy
10 is to:
11 (a) Ensure close communication and coordination among
12 state agencies involved in developing and administering a more
13 efficient and coordinated long-term-care service delivery
14 system in this state;
15 (b) Identify duplication and unnecessary service
16 provision in the long-term-care system and make
17 recommendations to decrease inappropriate service provision;
18 (c) Review current programs providing long-term-care
19 services to determine whether the programs are cost effective,
20 of high quality, and operating efficiently and make
21 recommendations to increase consistency and effectiveness in
22 the state's long-term-care programs;
23 (d) Develop strategies for promoting and implementing
24 cost-effective home and community-based services as an
25 alternative to institutional care which coordinate and
26 integrate the continuum of care needs of the elderly; and
27 (e) Assist the Office of Long-Term-Care Policy
28 Advisory Council as necessary to help implement this section.
29 (3) The Director of the Office of Long-Term-Care
30 Policy shall be appointed by, and serve at the pleasure of,
31 the Governor. The director shall report to, and be under the

1 general supervision of, the Secretary of Elderly Affairs and
2 shall not be subject to supervision by any other employee of
3 the department.

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

10 (a) The advisory council shall consist of:

11 1. A member of the Senate, appointed by the President
12 of the Senate;

13 2. A member of the House of Representatives, appointed
14 by the Speaker of the House of Representatives;

15 3. The Director of the Office of Long-Term-Care
16 Policy;

17 4. The Secretary of Health Care Administration;

18 5. The Secretary of Elderly Affairs;

19 6. The Secretary of Children and Family Services;

20 7. The Secretary of Health;

21 8. The Executive Director of the Department of
22 Veterans' Affairs;

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

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

27 11. A representative of the Florida Association of
28 Homes for the Aging, appointed by the Governor; and

29 12. Two representatives of people using long-term-care
30 services, appointed by the Governor from groups representing
31 elderly persons.

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

4 (c) The advisory council shall meet at the call of its
5 chair or at the request of a majority of its members. During
6 its first year of existence, the advisory council shall meet
7 at least monthly.

8 (d) Members of the advisory council appointed by the
9 Governor shall serve at the pleasure of the Governor and shall
10 be appointed to 4-year staggered terms in accordance with s.
11 20.052.

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

15 (b) The office shall call upon appropriate agencies of
16 state government, including the centers on aging in the State
17 University System, for assistance needed in discharging its
18 duties.

19 (c) Each state agency represented on the Office of
20 Long-Term-Care Policy Advisory Council shall make at least one
21 employee available to work with the Office of Long-Term-Care
22 Policy. All state agencies and universities shall assist the
23 office in carrying out its responsibilities prescribed by this
24 section.

25 (d) Each state agency shall pay from its own funds any
26 expenses related to its support of the Office of
27 Long-Term-Care Policy and its participation on the advisory
28 council. The Department of Elderly Affairs shall be
29 responsible for expenses related to participation on the
30 advisory council by members appointed by the Governor.

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

12 (b) The advisory council shall review and recommend
13 any suggested changes to the preliminary report, and each
14 subsequent annual update of the report, within 30 days after
15 the receipt of the preliminary report. Suggested revisions,
16 additions, or deletions shall be made to the Director of the
17 Office of Long-Term-Care Policy.

18 (c) The office shall submit its final report, and each
19 subsequent annual update of the report, to the Governor and
20 the Legislature within 30 days after the receipt of any
21 revisions, additions, or deletions suggested by the advisory
22 council, or after the time such comments are due to the
23 office.

24 Section 6. Present subsections (7), (8), and (9) of
25 section 430.204, Florida Statutes, are renumbered as
26 subsections (8), (9), and (10), respectively, and a new
27 subsection (7) is added to that section, to read:

28 430.204 Community-care-for-the-elderly core services;
29 departmental powers and duties.--

30 (7) In no case shall community-care-for-the-elderly
31 services be provided for longer than 60 days if the individual

1 does not complete the process for establishing eligibility
2 under the Florida Medicaid program.

3 Section 7. Section 430.7031, Florida Statutes, is
4 created to read:

5 430.7031 Nursing home transition program.--The
6 department and the Agency for Health Care Administration:

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

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

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

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

23 (5) May seek federal waivers necessary to administer
24 this section.

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

27 409.908 Reimbursement of Medicaid providers.--Subject
28 to specific appropriations, the agency shall reimburse
29 Medicaid providers, in accordance with state and federal law,
30 according to methodologies set forth in the rules of the
31 agency and in policy manuals and handbooks incorporated by

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

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

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

11 Section 9. Section 430.708, Florida Statutes, is
12 amended to read:

13 430.708 Certificate of need.--To ensure that Medicaid
14 community diversion pilot projects result in a reduction in
15 the projected average monthly nursing home caseload, the
16 agency shall, in accordance with the provisions of s.
17 408.034(5)~~s. 408.034(4)~~:

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

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

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

28 (4) Determine the feasibility of increasing the
29 nursing home occupancy threshold used in determining nursing
30 home bed needs under the certificate-of-need process.

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

3 641.386 Agent licensing and appointment required;
4 exceptions.--

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

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

18 400.0069 Local long-term care ombudsman councils;
19 duties; membership.--

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

1 facility residents; one attorney; and one professional social
2 worker. In no case shall the medical director of a long-term
3 care facility or an employee of the Agency for Health Care
4 Administration, the Department of Children and Family
5 Services, or the Department of Elderly Affairs serve as a
6 member or as an ex officio member of a council. Each member
7 of the council shall certify that neither the council member
8 nor any member of the council member's immediate family has
9 any conflict of interest pursuant to subsection (10). Local
10 ombudsman councils are encouraged to recruit council members
11 who are 60 years of age or older.

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

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

1 Section 13. Section 400.0091, Florida Statutes, is
2 amended to read:

3 400.0091 Training.--The ombudsman shall provide
4 appropriate training to all employees of the Office of State
5 Long-Term Care Ombudsman and to the state and local long-term
6 care ombudsman councils, including all unpaid volunteers. All
7 volunteers and appropriate employees of the Office of the
8 State Long-Term Care Ombudsman must be given a minimum of 20
9 hours of training upon employment or enrollment as a volunteer
10 and 10 hours of continuing education annually thereafter.
11 Training must cover, at a minimum, guardianships and powers of
12 attorney, medication administration, care and medication of
13 residents with dementia and Alzheimer's disease, accounting
14 for residents' funds, discharge rights and responsibilities,
15 and cultural sensitivity.No employee, officer, or
16 representative of the office or of the state or local
17 long-term care ombudsman councils, other than the ombudsman,
18 may carry out any authorized ombudsman duty or responsibility
19 unless the person has received the training required by this
20 section and has been approved by the ombudsman as qualified to
21 carry out ombudsman activities on behalf of the office or the
22 state or local long-term care ombudsman councils.

23 Section 14. This act shall take effect July 1, 2002.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS/SB 596

4 Revises the Office of Long-Term-Care Policy in the Department
5 of Elderly Affairs and consolidates some of the original
6 duties.

7 Increases membership on the advisory council from 9 members to
8 13 members.

9 Requires that the Office of Long-Term-Care Policy submit a
10 preliminary report of its findings and recommendations to the
11 advisory council by December 1, 2002, and annual updates
12 thereafter by November 1.

13 Limits community-care-for-the-elderly services to no longer
14 than 60 days if the individual does not complete the process
15 for establishing Medicaid eligibility.

16 Increases the local ombudsman council membership from 30 to
17 40; requires publication of quarterly reports of complaints;
18 and requires 20 hours of training upon employment and 10 hours
19 of continuing education thereafter.

20 Removes language that revised the purpose and duties of the
21 Department of Elderly Affairs.

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