

705-165AXF-08

Bill No. HB 703, 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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11 Representative(s) Green offered the following:

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13 **Amendment (with title amendment)**

14 Remove everything after the enacting clause

15

16 and insert:

17 Section 1. Section 409.221, Florida Statutes, is
18 created to read:

19 409.221 Consumer-directed care program.--

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

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

1 implemented statewide.

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

9 (4) CONSUMER-DIRECTED CARE.--

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

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

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

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

1 needs assessment.

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

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

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

15 5. "Provider" means:

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

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

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

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

1 services.

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

7 1. Personal care.

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

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

13 4. Assistance in taking self-administered medication.

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

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

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

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

27 a. Developing a job description.

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

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

- 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

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.--

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

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

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

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

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

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

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

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

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

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

5 Section 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

- 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

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.

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

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. Section 627.9408, Florida Statutes, is
23 amended to read:

24 627.9408 Rules.--

25 (1) The department has authority to adopt rules
26 pursuant to ss. 120.536(1) and 120.54 to implement the
27 provisions of this part.

28 (2) The department may adopt by rule the provisions of
29 the Long-Term Care Insurance Model Regulation adopted by the
30 National Association of Insurance Commissioners in the second
31 quarter of the year 2000 which are not in conflict with the

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1 Florida Insurance Code.

2 Section 21. This act shall take effect July 1, 2002.

3

4

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

6 And the title is amended as follows:

7 remove: the entire title

8

9 and insert:

10

A bill to be entitled

11

An act relating to long-term care; creating s.

12

409.221, F.S.; creating the "Florida

13

Consumer-Directed Care Act"; providing

14

legislative findings; providing legislative

15

intent; establishing the consumer-directed care

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program; providing for consumer selection of

17

certain long-term care services and providers;

18

providing for interagency agreements among the

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Agency for Health Care Administration and the

20

Department of Elderly Affairs, the Department

21

of Health, and the Department of Children and

22

Family Services; providing for program

23

eligibility and enrollment; providing

24

definitions; providing for consumer budget

25

allowances and purchasing guidelines;

26

specifying authorized services; providing roles

27

and responsibilities of consumers, the agency

28

and departments, and fiduciary intermediaries;

29

providing background screening requirements for

30

persons who render care under the program;

31

providing rulemaking authority of the agency

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

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1 reimbursement of per diem and travel expenses
2 for members of the advisory council; requiring
3 that the office submit an annual report to the
4 Governor and Legislature; requiring assistance
5 to the office by state agencies and
6 universities; creating s. 430.7031, F.S.;
7 requiring the Department of Elderly Affairs and
8 the Agency for Health Care Administration to
9 implement a nursing home transition program;
10 providing requirements for the program;
11 amending ss. 409.908, 430.708, and 641.386,
12 F.S., relating to reimbursement of Medicaid
13 providers, certificates of need, and agent
14 licensing and appointment; conforming cross
15 references to changes made by the act; amending
16 s. 20.41, F.S.; providing for administration of
17 the State Long-Term Care Ombudsman Council by
18 the Department of Elderly Affairs; amending s.
19 400.0063, F.S.; locating the Office of the
20 State Long-Term Care Ombudsman in the
21 department; providing for appointment of the
22 ombudsman by the Secretary of Elderly Affairs;
23 amending s. 400.0065, F.S.; requiring the
24 secretary's approval of staff for the local
25 ombudsman councils; deleting requirement that
26 the ombudsman prepare an annual legislative
27 budget request; revising rulemaking authority;
28 amending s. 400.0067, F.S.; revising duties of
29 the State Long-Term Care Ombudsman Council;
30 providing duties of the department and
31 secretary; amending s. 400.0069, F.S.;

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1 increasing the maximum membership of the local
2 long-term care ombudsman councils; amending s.
3 400.0071, F.S.; revising procedures relating to
4 complaints; amending s. 400.0087, F.S.;
5 revising provisions relating to agency
6 oversight; amending s. 400.0089, F.S.; revising
7 reporting responsibilities; requiring the State
8 Long-Term Care Ombudsman Council to publish
9 complaint information quarterly; amending s.
10 400.0091, F.S.; specifying training
11 requirements for employees of the Office of the
12 State Long-Term Care Ombudsman and its
13 volunteers; amending s. 400.179, F.S.;
14 providing an exemption from certain
15 requirements that the transferor of a nursing
16 facility maintain a bond; amending s. 627.9408,
17 F.S.; authorizing the department to adopt by
18 rule certain provisions of the Long-Term Care
19 Insurance Model Regulation, as adopted by the
20 National Association of Insurance
21 Commissioners; providing an effective date.

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