

705-165AXE-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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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

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

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1 planning for the state's long-term care system; to expand  
2 successful pilot programs; and to establish a nursing facility  
3 preadmission screening program.

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

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

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

18 Section 4. Section 408.034, Florida Statutes, is  
19 amended to read:

20 408.034 Duties and responsibilities of agency;  
21 rules.--

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

29 (2) In the exercise of its authority to issue licenses  
30 to health care facilities and health service providers, as  
31 provided under chapters 393, 395, and parts II and VI of



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1 chapter 400, the agency may not issue a license to any health  
2 care facility, health service provider, hospice, or part of a  
3 health care facility which fails to receive a certificate of  
4 need or an exemption for the licensed facility or service.

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

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

26 (5)(4) The agency shall establish by rule a  
27 nursing-home-bed-need methodology that reduces the community  
28 nursing home bed need for the areas of the state where the  
29 agency establishes pilot community diversion programs through  
30 the Title XIX aging waiver program.

31 (6)(5) The agency may adopt rules necessary to

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1 implement ss. 408.031-408.045.

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

7 409.912 Cost-effective purchasing of health care.--The  
8 agency shall purchase goods and services for Medicaid  
9 recipients in the most cost-effective manner consistent with  
10 the delivery of quality medical care. The agency shall  
11 maximize the use of prepaid per capita and prepaid aggregate  
12 fixed-sum basis services when appropriate and other  
13 alternative service delivery and reimbursement methodologies,  
14 including competitive bidding pursuant to s. 287.057, designed  
15 to facilitate the cost-effective purchase of a case-managed  
16 continuum of care. The agency shall also require providers to  
17 minimize the exposure of recipients to the need for acute  
18 inpatient, custodial, and other institutional care and the  
19 inappropriate or unnecessary use of high-cost services. The  
20 agency may establish prior authorization requirements for  
21 certain populations of Medicaid beneficiaries, certain drug  
22 classes, or particular drugs to prevent fraud, abuse, overuse,  
23 and possible dangerous drug interactions. The Pharmaceutical  
24 and Therapeutics Committee shall make recommendations to the  
25 agency on drugs for which prior authorization is required. The  
26 agency shall inform the Pharmaceutical and Therapeutics  
27 Committee of its decisions regarding drugs subject to prior  
28 authorization.

29 (3) The agency may contract with:

30 (f) An entity that provides in-home physician services  
31 to test the cost-effectiveness of enhanced home-based medical

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

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

27 (b) The agency shall operate the CARES program through  
28 an interagency agreement with the Department of Elderly  
29 Affairs.

30 (c) Prior to making payment for nursing facility  
31 services for a Medicaid recipient, the agency must verify that

1 the nursing facility preadmission screening program has  
 2 determined that the individual requires nursing facility care  
 3 and that the individual cannot be safely served in  
 4 community-based programs. The nursing facility preadmission  
 5 screening program shall refer a Medicaid recipient to a  
 6 community-based program if the individual could be safely  
 7 served at a lower cost and the recipient chooses to  
 8 participate in such program.

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

13 1. Rate of diversion to community alternative  
 14 programs;

15 2. CARES program staffing needs to achieve additional  
 16 diversions;

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

20 4. Barriers to appropriate placement, including  
 21 barriers due to policies or operations of other agencies or  
 22 state-funded programs; and

23 5. Statutory changes necessary to ensure that  
 24 individuals in need of long-term care services receive care in  
 25 the least restrictive environment.

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

28 430.041 Office of Long-Term Care Policy.--

29 (1) There is established in the Department of Elderly  
 30 Affairs the Office of Long-Term Care Policy to evaluate the  
 31 state's long-term care service delivery system and make

1 recommendations to increase the availability and the use of  
2 noninstitutional settings to provide care to the elderly and  
3 ensure coordination among the agencies responsible for the  
4 long-term care continuum.

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

7 (a) Ensure close communication and coordination among  
8 state agencies involved in developing and administering a more  
9 efficient and coordinated long-term care service delivery  
10 system in this state.

11 (b) Identify duplication and unnecessary service  
12 provision in the long-term care system and make  
13 recommendations to decrease inappropriate service provision.

14 (c) Review current programs providing long-term care  
15 services to determine whether the programs are cost effective,  
16 of high quality, and operating efficiently and make  
17 recommendations to increase consistency and effectiveness in  
18 the state's long-term care programs.

19 (d) Develop strategies for promoting and implementing  
20 cost-effective home and community-based services as an  
21 alternative to institutional care which coordinate and  
22 integrate the continuum of care needs of the elderly.

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

25 (3) The Director of the Office of Long-Term Care  
26 Policy shall be appointed by, and serve at the pleasure of,  
27 the Governor. The director shall report to, and be under the  
28 general supervision of, the Secretary of Elderly Affairs and  
29 shall not be subject to supervision by any other employee of  
30 the department.

31 (4) The Office of Long-Term Care Policy shall have an

1 advisory council, whose chair shall be the Director of the  
2 Office of Long-Term Care Policy. The purposes of the advisory  
3 council are to provide assistance and direction to the office  
4 and to ensure that the appropriate state agencies are properly  
5 implementing recommendations from the office.  
6 (a) The advisory council shall consist of:  
7 1. A member of the Senate, appointed by the President  
8 of the Senate.  
9 2. A member of the House of Representatives, appointed  
10 by the Speaker of the House of Representatives.  
11 3. The Director of the Office of Long-Term Care  
12 Policy.  
13 4. The Secretary of Health Care Administration.  
14 5. The Secretary of Elderly Affairs.  
15 6. The Secretary of Children and Family Services.  
16 7. The Secretary of Health.  
17 8. The Executive Director of the Department of  
18 Veterans' Affairs.  
19 9. A representative of the Florida Association of Area  
20 Agencies on Aging, appointed by the Governor.  
21 10. A representative of the Florida Association of  
22 Aging Service Providers, appointed by the Governor.  
23 11. Three persons possessing broad knowledge and  
24 experience in the delivery of long-term care services,  
25 appointed by the Governor.  
26 12. Two representatives of persons using long-term  
27 care services, appointed by the Governor from groups  
28 representing elderly persons.  
29 (b) Members shall serve without compensation but are  
30 entitled to receive reimbursement for travel and per diem as  
31 provided in s. 112.061.

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

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

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

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

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

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

28           (6)(a) By December 1, 2002, the office shall submit to  
29 the advisory council a preliminary report of its findings and  
30 recommendations on improving the long-term care continuum in  
31 this state. The report must contain recommendations and

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1 implementation proposals for policy changes, as well as  
2 legislative and funding recommendations that will make the  
3 system more effective and efficient. The report shall contain  
4 a specific plan for accomplishing the recommendations and  
5 proposals. Thereafter, the office shall revise and update the  
6 report annually and resubmit it to the advisory council for  
7 review and comments by November 1 of each year.

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

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

20 Section 7. Section 430.7031, Florida Statutes, is  
21 created to read:

22 430.7031 Nursing home transition program.--The  
23 department and the Agency for Health Care Administration:

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

27 (2) Shall collaboratively work to identify long-stay  
28 nursing home residents who are able to move to community  
29 placements, and to provide case management and supportive  
30 services to such individuals while they are in nursing homes  
31 to assist such individuals in moving to less expensive and



1 less restrictive settings.

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

5 (4) Shall offer such individuals priority placement  
6 and services in all home-based and community-based care  
7 programs and shall ensure that funds are available to provide  
8 services to individuals to whom services are offered.

9 (5) May seek federal waivers necessary to administer  
10 this section.

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

13 409.908 Reimbursement of Medicaid providers.--Subject  
14 to specific appropriations, the agency shall reimburse  
15 Medicaid providers, in accordance with state and federal law,  
16 according to methodologies set forth in the rules of the  
17 agency and in policy manuals and handbooks incorporated by  
18 reference therein. These methodologies may include fee  
19 schedules, reimbursement methods based on cost reporting,  
20 negotiated fees, competitive bidding pursuant to s. 287.057,  
21 and other mechanisms the agency considers efficient and  
22 effective for purchasing services or goods on behalf of  
23 recipients. Payment for Medicaid compensable services made on  
24 behalf of Medicaid eligible persons is subject to the  
25 availability of moneys and any limitations or directions  
26 provided for in the General Appropriations Act or chapter 216.  
27 Further, nothing in this section shall be construed to prevent  
28 or limit the agency from adjusting fees, reimbursement rates,  
29 lengths of stay, number of visits, or number of services, or  
30 making any other adjustments necessary to comply with the  
31 availability of moneys and any limitations or directions

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1 provided for in the General Appropriations Act, provided the  
2 adjustment is consistent with legislative intent.

3 (4) Subject to any limitations or directions provided  
4 for in the General Appropriations Act, alternative health  
5 plans, health maintenance organizations, and prepaid health  
6 plans shall be reimbursed a fixed, prepaid amount negotiated,  
7 or competitively bid pursuant to s. 287.057, by the agency and  
8 prospectively paid to the provider monthly for each Medicaid  
9 recipient enrolled. The amount may not exceed the average  
10 amount the agency determines it would have paid, based on  
11 claims experience, for recipients in the same or similar  
12 category of eligibility. The agency shall calculate  
13 capitation rates on a regional basis and, beginning September  
14 1, 1995, shall include age-band differentials in such  
15 calculations. Effective July 1, 2001, the cost of exempting  
16 statutory teaching hospitals, specialty hospitals, and  
17 community hospital education program hospitals from  
18 reimbursement ceilings and the cost of special Medicaid  
19 payments shall not be included in premiums paid to health  
20 maintenance organizations or prepaid health care plans. Each  
21 rate semester, the agency shall calculate and publish a  
22 Medicaid hospital rate schedule that does not reflect either  
23 special Medicaid payments or the elimination of rate  
24 reimbursement ceilings, to be used by hospitals and Medicaid  
25 health maintenance organizations, in order to determine the  
26 Medicaid rate referred to in ss. 409.912(17)~~409.912(16)~~,  
27 409.9128(5), and 641.513(6).

28 Section 9. Section 430.708, Florida Statutes, is  
29 amended to read:

30 430.708 Certificate of need.--To ensure that Medicaid  
31 community diversion pilot projects result in a reduction in

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1 the projected average monthly nursing home caseload, the  
2 agency shall, in accordance with the provisions of s.  
3 408.034(5)~~s. 408.034(4)~~:

4 (1) Reduce the projected nursing home bed need in each  
5 certificate-of-need batching cycle in the community diversion  
6 pilot project areas.

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

10 (3) Adopt rules to reduce the number of beds in  
11 Medicaid-participating nursing homes eligible for Medicaid,  
12 through a Medicaid-selective contracting process or some other  
13 appropriate method.

14 (4) Determine the feasibility of increasing the  
15 nursing home occupancy threshold used in determining nursing  
16 home bed needs under the certificate-of-need process.

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

19 641.386 Agent licensing and appointment required;  
20 exceptions.--

21 (4) All agents and health maintenance organizations  
22 shall comply with and be subject to the applicable provisions  
23 of ss. 641.309 and 409.912(19)~~409.912(18)~~, and all companies  
24 and entities appointing agents shall comply with s. 626.451,  
25 when marketing for any health maintenance organization  
26 licensed pursuant to this part, including those organizations  
27 under contract with the Agency for Health Care Administration  
28 to provide health care services to Medicaid recipients or any  
29 private entity providing health care services to Medicaid  
30 recipients pursuant to a prepaid health plan contract with the  
31 Agency for Health Care Administration.

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

3           20.41 Department of Elderly Affairs.--There is created  
4 a Department of Elderly Affairs.

5           (4) The department shall administer ~~administratively~~  
6 ~~house~~ the State Long-Term Care Ombudsman Council, created by  
7 s. 400.0067, and the local long-term care ombudsman councils,  
8 created by s. 400.0069 and shall, as required by s. 712 of the  
9 federal Older Americans Act of 1965, ensure that both the  
10 state and local long-term care ombudsman councils operate in  
11 compliance with the Older Americans Act. ~~The councils in~~  
12 ~~performance of their duties shall not be subject to control,~~  
13 ~~supervision, or direction by the department.~~

14           Section 12. Subsection (1) and paragraph (b) of  
15 subsection (2) of section 400.0063, Florida Statutes, are  
16 amended to read:

17           400.0063 Establishment of Office of State Long-Term  
18 Care Ombudsman; designation of ombudsman and legal advocate.--

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

22           (2)

23           (b) The State Long-Term Care Ombudsman shall be  
24 appointed by and shall serve at the pleasure of the Secretary  
25 ~~of Elderly Affairs State Long-Term Care Ombudsman Council~~. No  
26 person who has a conflict of interest, or has an immediate  
27 family member who has a conflict of interest, may be involved  
28 in the designation of the ombudsman.

29           Section 13. Paragraphs (c) and (f) of subsection (2)  
30 and subsection (3) of section 400.0065, Florida Statutes, are  
31 amended to read:

1           400.0065 State Long-Term Care Ombudsman; duties and  
2 responsibilities; conflict of interest.--

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

5           (c) Within the limits of federal and state funding  
6 authorized and appropriated, employ such personnel, including  
7 staff for local ombudsman councils, as are necessary to  
8 perform adequately the functions of the office and provide or  
9 contract for legal services to assist the state and local  
10 ombudsman councils in the performance of their duties. Staff  
11 positions for each local ombudsman council may be established  
12 as career service positions, and shall be filled by the  
13 ombudsman after approval by the secretary ~~consultation with~~  
14 ~~the respective local ombudsman council.~~

15           ~~(f) Annually prepare a budget request that shall be~~  
16 ~~submitted to the Governor by the department for transmittal to~~  
17 ~~the Legislature.~~

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

19           (a) Have a direct involvement in the licensing or  
20 certification of, or an ownership or investment interest in, a  
21 long-term care facility or a provider of a long-term care  
22 service.

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

25           (c) Receive, or have a right to receive, directly or  
26 indirectly, remuneration, in cash or in kind, under a  
27 compensation agreement with the owner or operator of a  
28 long-term care facility.

29  
30 The Department of Elderly Affairs, ~~in consultation with the~~  
31 ~~ombudsman~~, shall adopt rules to establish procedures to

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1 identify and eliminate conflicts of interest as described in  
2 this subsection.

3 Section 14. Paragraphs (c), (d), (f), and (g) of  
4 subsection (2) and paragraph (b) of subsection (3) of section  
5 400.0067, Florida Statutes, are amended to read:

6 400.0067 Establishment of State Long-Term Care  
7 Ombudsman Council; duties; membership.--

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

9 (c) Assist the ombudsman to discover, investigate, and  
10 determine the existence of abuse or neglect in any long-term  
11 care facility ~~and to develop procedures, in consultation with~~  
12 The Department of Elderly Affairs shall develop procedures,  
13 relating to such investigations. Investigations may consist,  
14 in part, of one or more onsite administrative inspections.

15 (d) Assist the ombudsman in eliciting, receiving,  
16 responding to, and resolving complaints made by or on behalf  
17 of long-term care facility residents and in developing  
18 ~~procedures, in consultation with the Department of Elderly~~  
19 ~~Affairs,~~ relating to the receipt and resolution of such  
20 complaints. The secretary shall approve all such procedures.

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

26 ~~(f)(g)~~ Prepare an annual report describing the  
27 activities carried out by the ombudsman and the State  
28 Long-Term Care Ombudsman Council in the year for which the  
29 report is prepared. The State Long-Term Care Ombudsman  
30 Council shall submit the report to the Secretary of Elderly  
31 Affairs. The secretary shall in turn submit the report to the

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1 Commissioner of the United States Administration on Aging, the  
2 Governor, the President of the Senate, the Speaker of the  
3 House of Representatives, the minority leaders of the House  
4 and Senate, the chairpersons of appropriate House and Senate  
5 committees, the Secretary of ~~Secretaries of Elderly Affairs~~  
6 ~~and~~ Children and Family Services, and the Secretary of Health  
7 Care Administration. The report shall be submitted by the  
8 Secretary of Elderly Affairs at least 30 days before the  
9 convening of the regular session of the Legislature and shall,  
10 at a minimum:

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

13 2. Evaluate the problems experienced by residents of  
14 long-term care facilities.

15 3. Contain recommendations for improving the quality  
16 of life of the residents and for protecting the health,  
17 safety, welfare, and rights of the residents.

18 4. Analyze the success of the ombudsman program during  
19 the preceding year and identify the barriers that prevent the  
20 optimal operation of the program. The report of the program's  
21 successes shall also address the relationship between the  
22 state long-term care ombudsman program, the Department of  
23 Elderly Affairs, the Agency for Health Care Administration,  
24 and the Department of Children and Family Services, and an  
25 assessment of how successfully the state long-term care  
26 ombudsman program has carried out its responsibilities under  
27 the Older Americans Act.

28 5. Provide policy and regulatory and legislative  
29 recommendations to solve identified problems; resolve  
30 residents' complaints; improve the quality of care and life of  
31 the residents; protect the health, safety, welfare, and rights

1 of the residents; and remove the barriers to the optimal  
2 operation of the state long-term care ombudsman program.

3 6. Contain recommendations from the local ombudsman  
4 councils regarding program functions and activities.

5 7. Include a report on the activities of the legal  
6 advocate and other legal advocates acting on behalf of the  
7 local and state councils.

8 (3)

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

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

16 3. If the Governor's appointments are not made within  
17 60 days after the ombudsman submits the list, the ombudsman,  
18 in consultation with the secretary ~~State Long-Term Care~~  
19 ~~Ombudsman Council~~, shall appoint three members, one of whom  
20 must be over 60 years of age.

21 Section 15. Subsection (4) of section 400.0069,  
22 Florida Statutes, is amended to read:

23 400.0069 Local long-term care ombudsman councils;  
24 duties; membership.--

25 (4) Each local ombudsman council shall be composed of  
26 no less than 15 members and no more than 40 ~~30~~ members from  
27 the local planning and service area, to include the following:  
28 one medical or osteopathic physician whose practice includes  
29 or has included a substantial number of geriatric patients and  
30 who may have limited practice in a long-term care facility;  
31 one registered nurse who has geriatric experience, if



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1 possible; one licensed pharmacist; one registered dietitian;  
2 at least six nursing home residents or representative consumer  
3 advocates for nursing home residents; at least three residents  
4 of assisted living facilities or adult family-care homes or  
5 three representative consumer advocates for long-term care  
6 facility residents; one attorney; and one professional social  
7 worker. In no case shall the medical director of a long-term  
8 care facility or an employee of the Agency for Health Care  
9 Administration, the Department of Children and Family  
10 Services, or the Department of Elderly Affairs serve as a  
11 member or as an ex officio member of a council. Each member  
12 of the council shall certify that neither the council member  
13 nor any member of the council member's immediate family has  
14 any conflict of interest pursuant to subsection (10). Local  
15 ombudsman councils are encouraged to recruit council members  
16 who are 60 years of age or older.

17 Section 16. Subsection (1) of section 400.0071,  
18 Florida Statutes, is amended to read:

19 400.0071 Complaint procedures.--

20 (1) The state ombudsman council shall recommend to the  
21 ombudsman and the secretary ~~establish~~ state and local  
22 procedures for receiving complaints against a nursing home or  
23 long-term care facility or its employee. The procedures shall  
24 be implemented after the approval of the ombudsman and the  
25 secretary.

26 Section 17. Subsections (1) and (2) of section  
27 400.0087, Florida Statutes, are amended to read:

28 400.0087 Agency oversight.--

29 (1) The Department of Elderly Affairs shall monitor  
30 the local ombudsman councils responsible for carrying out the  
31 duties delegated by s. 400.0069 and federal law. The

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1 department, in consultation with the ombudsman ~~and the State~~  
 2 ~~Long-Term Care Ombudsman Council~~, shall adopt rules to  
 3 establish the policies and procedures for the monitoring of  
 4 local ombudsman councils.

5 (2) The department is responsible for ensuring that  
 6 the Office of State Long-Term Care Ombudsman ~~prepares its~~  
 7 ~~annual report~~; provides information to public and private  
 8 agencies, legislators, and others; provides appropriate  
 9 training to representatives of the office or of the state or  
 10 local long-term care ombudsman councils; and coordinates  
 11 ombudsman services with the Advocacy Center for Persons with  
 12 Disabilities and with providers of legal services to residents  
 13 of long-term care facilities in compliance with state and  
 14 federal laws.

15 Section 18. Section 400.0089, Florida Statutes, is  
 16 amended to read:

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

1 appropriate. The State Long-Term Care Ombudsman Council shall  
2 publish quarterly and make readily available information  
3 pertaining to the number and types of complaints received by  
4 the long-term care ombudsman program.

5 Section 19. Section 400.0091, Florida Statutes, is  
6 amended to read:

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

27 Section 20. Paragraph (d) of subsection (5) of section  
28 400.179, Florida Statutes, is amended to read:

29 400.179 Sale or transfer of ownership of a nursing  
30 facility; liability for Medicaid underpayments and  
31 overpayments.--

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

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

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

16 2. The leasehold operator may meet the bond  
17 requirement through other arrangements acceptable to the  
18 department.

19 3. All existing nursing facility licensees, operating  
20 the facility as a leasehold, shall acquire, maintain, and  
21 provide proof to the agency of the 30-month bond required in  
22 subparagraph 1., above, on and after July 1, 1993, for each  
23 license renewal.

24 4. It shall be the responsibility of all nursing  
25 facility operators, operating the facility as a leasehold, to  
26 renew the 30-month bond and to provide proof of such renewal  
27 to the agency annually at the time of application for license  
28 renewal.

29 5. Any failure of the nursing facility operator to  
30 acquire, maintain, renew annually, or provide proof to the  
31 agency shall be grounds for the agency to deny, cancel,

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1 revoke, or suspend the facility license to operate such  
 2 facility and to take any further action, including, but not  
 3 limited to, enjoining the facility, asserting a moratorium, or  
 4 applying for a receiver, deemed necessary to ensure compliance  
 5 with this section and to safeguard and protect the health,  
 6 safety, and welfare of the facility's residents. A lease  
 7 agreement required as a condition of bond financing or  
 8 refinancing under s. 154.213 by a health facilities authority  
 9 or required under s. 159.30 by a county or municipality is not  
 10 a leasehold for purposes of this paragraph and is not subject  
 11 to the bond requirement of this paragraph.

12 Section 21. Section 627.9408, Florida Statutes, is  
 13 amended to read:

14 627.9408 Rules.--

15 (1) The department has authority to adopt rules  
 16 pursuant to ss. 120.536(1) and 120.54 to implement the  
 17 provisions of this part.

18 (2) The department may adopt by rule the provisions of  
 19 the Long-Term Care Insurance Model Regulation adopted by the  
 20 National Association of Insurance Commissioners in the second  
 21 quarter of the year 2000 which are not in conflict with the  
 22 Florida Insurance Code.

23 Section 22. This act shall take effect July 1, 2002.

24  
 25  
 26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 remove: the entire title

29

30 and insert:

31 A bill to be entitled

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

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

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1 Administration to implement a nursing home  
2 transition program; providing requirements for  
3 the program; amending ss. 409.908, 430.708, and  
4 641.386, F.S., relating to reimbursement of  
5 Medicaid providers, certificates of need, and  
6 agent licensing and appointment; conforming  
7 cross references to changes made by the act;  
8 amending s. 20.41, F.S.; providing for  
9 administration of the State Long-Term Care  
10 Ombudsman Council by the Department of Elderly  
11 Affairs; amending s. 400.0063, F.S.; locating  
12 the Office of the State Long-Term Care  
13 Ombudsman in the department; providing for  
14 appointment of the ombudsman by the Secretary  
15 of Elderly Affairs; amending s. 400.0065, F.S.;  
16 requiring the secretary's approval of staff for  
17 the local ombudsman councils; deleting  
18 requirement that the ombudsman prepare an  
19 annual legislative budget request; revising  
20 rulemaking authority; amending s. 400.0067,  
21 F.S.; revising duties of the State Long-Term  
22 Care Ombudsman Council; providing duties of the  
23 department and secretary; amending s. 400.0069,  
24 F.S.; increasing the maximum membership of the  
25 local long-term care ombudsman councils;  
26 amending s. 400.0071, F.S.; revising procedures  
27 relating to complaints; amending s. 400.0087,  
28 F.S.; revising provisions relating to agency  
29 oversight; amending s. 400.0089, F.S.; revising  
30 reporting responsibilities; requiring the State  
31 Long-Term Care Ombudsman Council to publish



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1 complaint information quarterly; amending s.  
2 400.0091, F.S.; specifying training  
3 requirements for employees of the Office of the  
4 State Long-Term Care Ombudsman and its  
5 volunteers; amending s. 400.179, F.S.;  
6 providing an exemption from certain  
7 requirements that the transferor of a nursing  
8 facility maintain a bond; amending s. 627.9408,  
9 F.S.; authorizing the department to adopt by  
10 rule certain provisions of the Long-Term Care  
11 Insurance Model Regulation, as adopted by the  
12 National Association of Insurance  
13 Commissioners; providing an effective date.

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