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Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Green offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause

and insert:

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

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

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

Section 2. Subsection (1) and paragraph (b) of subsection (2) of section 400.0063, Florida Statutes, are

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1 amended to read:

2 400.0063 Establishment of Office of State Long-Term
3 Care Ombudsman; designation of ombudsman and legal advocate.--

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

7 (2)

8 (b) The State Long-Term Care Ombudsman shall be
9 appointed by and shall serve at the pleasure of the Secretary
10 ~~of Elderly Affairs State Long-Term Care Ombudsman Council~~. No
11 person who has a conflict of interest, or has an immediate
12 family member who has a conflict of interest, may be involved
13 in the designation of the ombudsman.

14 Section 3. Paragraphs (c) and (f) of subsection (2)
15 and subsection (3) of section 400.0065, Florida Statutes, are
16 amended to read:

17 400.0065 State Long-Term Care Ombudsman; duties and
18 responsibilities; conflict of interest.--

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

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

31 ~~(f) Annually prepare a budget request that shall be~~

1 ~~submitted to the Governor by the department for transmittal to~~
2 ~~the Legislature.~~

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

4 (a) Have a direct involvement in the licensing or
5 certification of, or an ownership or investment interest in, a
6 long-term care facility or a provider of a long-term care
7 service.

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

10 (c) Receive, or have a right to receive, directly or
11 indirectly, remuneration, in cash or in kind, under a
12 compensation agreement with the owner or operator of a
13 long-term care facility.

14

15 The Department of Elderly Affairs, ~~in consultation with the~~
16 ~~ombudsman,~~ shall adopt rules to establish procedures to
17 identify and eliminate conflicts of interest as described in
18 this subsection.

19 Section 4. Paragraphs (c), (d), (f), and (g) of
20 subsection (2) and paragraph (b) of subsection (3) of section
21 400.0067, Florida Statutes, are amended to read:

22 400.0067 Establishment of State Long-Term Care
23 Ombudsman Council; duties; membership.--

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

25 (c) Assist the ombudsman to discover, investigate, and
26 determine the existence of abuse or neglect in any long-term
27 care facility ~~and to develop procedures, in consultation with~~
28 The Department of Elderly Affairs shall develop procedures,
29 relating to such investigations. Investigations may consist,
30 in part, of one or more onsite administrative inspections.

31 (d) Assist the ombudsman in eliciting, receiving,

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1 responding to, and resolving complaints made by or on behalf
2 of long-term care facility residents and in developing
3 procedures, ~~in consultation with the Department of Elderly~~
4 ~~Affairs,~~ relating to the receipt and resolution of such
5 complaints. The secretary shall approve all such procedures.

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

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

- 27 1. Contain and analyze data collected concerning
- 28 complaints about and conditions in long-term care facilities.
- 29 2. Evaluate the problems experienced by residents of
- 30 long-term care facilities.
- 31 3. Contain recommendations for improving the quality

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1 of life of the residents and for protecting the health,
2 safety, welfare, and rights of the residents.

3 4. Analyze the success of the ombudsman program during
4 the preceding year and identify the barriers that prevent the
5 optimal operation of the program. The report of the program's
6 successes shall also address the relationship between the
7 state long-term care ombudsman program, the Department of
8 Elderly Affairs, the Agency for Health Care Administration,
9 and the Department of Children and Family Services, and an
10 assessment of how successfully the state long-term care
11 ombudsman program has carried out its responsibilities under
12 the Older Americans Act.

13 5. Provide policy and regulatory and legislative
14 recommendations to solve identified problems; resolve
15 residents' complaints; improve the quality of care and life of
16 the residents; protect the health, safety, welfare, and rights
17 of the residents; and remove the barriers to the optimal
18 operation of the state long-term care ombudsman program.

19 6. Contain recommendations from the local ombudsman
20 councils regarding program functions and activities.

21 7. Include a report on the activities of the legal
22 advocate and other legal advocates acting on behalf of the
23 local and state councils.

24 (3)

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

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

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1 3. If the Governor's appointments are not made within
2 60 days after the ombudsman submits the list, the ombudsman,
3 in consultation with the secretary ~~State Long-Term Care~~
4 ~~Ombudsman Council~~, shall appoint three members, one of whom
5 must be over 60 years of age.

6 Section 5. Subsection (1) of section 400.0071, Florida
7 Statutes, is amended to read:

8 400.0071 Complaint procedures.--

9 (1) The state ombudsman council shall recommend to the
10 ombudsman and the secretary ~~establish~~ state and local
11 procedures for receiving complaints against a nursing home or
12 long-term care facility or its employee. The procedures shall
13 be implemented after the approval of the ombudsman and the
14 secretary.

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

17 400.0087 Agency oversight.--

18 (1) The Department of Elderly Affairs shall monitor
19 the local ombudsman councils responsible for carrying out the
20 duties delegated by s. 400.0069 and federal law. The
21 department, in consultation with the ombudsman ~~and the State~~
22 ~~Long-Term Care Ombudsman Council~~, shall adopt rules to
23 establish the policies and procedures for the monitoring of
24 local ombudsman councils.

25 (2) The department is responsible for ensuring that
26 the Office of State Long-Term Care Ombudsman ~~prepares its~~
27 ~~annual report~~; provides information to public and private
28 agencies, legislators, and others; provides appropriate
29 training to representatives of the office or of the state or
30 local long-term care ombudsman councils; and coordinates
31 ombudsman services with the Advocacy Center for Persons with

1 Disabilities and with providers of legal services to residents
2 of long-term care facilities in compliance with state and
3 federal laws.

4 Section 7. Section 400.0089, Florida Statutes, is
5 amended to read:

6 400.0089 Agency reports.--~~The State Long-Term Care~~
7 ~~Ombudsman Council, shall, in cooperation with the~~ Department
8 of Elderly Affairs shall maintain a statewide uniform
9 reporting system to collect and analyze data relating to
10 complaints and conditions in long-term care facilities and to
11 residents, for the purpose of identifying and resolving
12 significant problems. The State Long-Term Care Ombudsman
13 Council shall submit such data as part of its annual report
14 required pursuant to s. 400.0067(2)(g) to the Agency for
15 Health Care Administration, the Department of Children and
16 Family Services, the Florida Statewide Advocacy Council, the
17 Advocacy Center for Persons with Disabilities, the
18 Commissioner for the United States Administration on Aging,
19 the National Ombudsman Resource Center, and any other state or
20 federal entities that the ombudsman determines appropriate.

21 Section 8. Subsections (2) and (3) of section
22 400.0066, Florida Statutes, are repealed.

23 Section 9. Section 409.221, Florida Statutes, is
24 created to read:

25 409.221 Consumer-directed care program.--

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

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

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

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

15 (4) CONSUMER-DIRECTED CARE.--

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

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

1 participate in the consumer-directed care program.
2 (c) Definitions.--For purposes of this section, the
3 term:
4 1. "Budget allowance" means the amount of money made
5 available each month to a consumer to purchase needed
6 long-term care services, based on the results of a functional
7 needs assessment.
8 2. "Consultant" means an individual who provides
9 technical assistance to consumers in meeting their
10 responsibilities under this section.
11 3. "Consumer" means a person who has chosen to
12 participate in the program, has met the enrollment
13 requirements, and has received an approved budget allowance.
14 4. "Fiscal intermediary" means an entity approved by
15 the agency that helps the consumer manage the consumer's
16 budget allowance, retains the funds, processes employment
17 information, if any, and tax information, reviews records to
18 ensure correctness, writes paychecks to providers, and
19 delivers paychecks to the consumer for distribution to
20 providers and caregivers.
21 5. "Provider" means:
22 a. A person licensed or otherwise permitted to render
23 services eligible for reimbursement under this program for
24 whom the consumer is not the employer of record; or
25 b. A consumer-employed caregiver for whom the consumer
26 is the employer of record.
27 6. "Representative" means an uncompensated individual
28 designated by the consumer to assist in managing the
29 consumer's budget allowance and needed services.
30 (d) Budget allowances.--Consumers enrolled in the
31 program shall be given a monthly budget allowance based on the

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1 results of their assessed functional needs and the financial
2 resources of the program. Consumers shall receive the budget
3 allowance directly from an agency-approved fiscal
4 intermediary. Each department shall develop purchasing
5 guidelines, approved by the agency, to assist consumers in
6 using the budget allowance to purchase needed, cost-effective
7 services.

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

13 1. Personal care.

14 2. Homemaking and chores, including housework, meals,
15 shopping, and transportation.

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

19 4. Assistance in taking self-administered medication.

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

24 6. Personal care and support services provided in an
25 assisted living facility.

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

30 1. In cases where a consumer is the employer of
31 record, the consumer's roles and responsibilities include, but

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

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

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

8 1. Providing recordkeeping services.

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

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

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

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

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

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

31 2. The agency shall take all necessary action to

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1 ensure state compliance with federal regulations. The agency
2 shall apply for any necessary federal waivers or waiver
3 amendments needed to implement the program.

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

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

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

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

26 Section 11. Paragraph (d) of subsection (5) of section
27 400.179, Florida Statutes, is amended to read:

28 400.179 Sale or transfer of ownership of a nursing
29 facility; liability for Medicaid underpayments and
30 overpayments.--

31 (5) Because any transfer of a nursing facility may

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

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

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

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

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

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

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

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1 facility and to take any further action, including, but not
2 limited to, enjoining the facility, asserting a moratorium, or
3 applying for a receiver, deemed necessary to ensure compliance
4 with this section and to safeguard and protect the health,
5 safety, and welfare of the facility's residents.

6
7 However, notwithstanding any provision of this section to the
8 contrary, a lease agreement required as a condition of bond
9 financing or refinancing under s. 154.213 by a health
10 facilities authority or under s. 159.30 by a county or
11 municipality is not considered to be a leasehold and,
12 therefore, is not subject to the bond requirements of this
13 paragraph.

14 Section 12. Section 408.034, Florida Statutes, is
15 amended to read:

16 408.034 Duties and responsibilities of agency;
17 rules.--

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

25 (2) In the exercise of its authority to issue licenses
26 to health care facilities and health service providers, as
27 provided under chapters 393, 395, and parts II and VI of
28 chapter 400, the agency may not issue a license to any health
29 care facility, health service provider, hospice, or part of a
30 health care facility which fails to receive a certificate of
31 need or an exemption for the licensed facility or service.

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

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

22 ~~(5)~~(4) The agency shall establish by rule a
23 nursing-home-bed-need methodology that reduces the community
24 nursing home bed need for the areas of the state where the
25 agency establishes pilot community diversion programs through
26 the Title XIX aging waiver program.

27 ~~(6)~~(5) The agency may adopt rules necessary to
28 implement ss. 408.031-408.045.

29 Section 13. Present subsections (13) through (39) of
30 section 409.912, Florida Statutes, are renumbered as
31 subsections (14) through (40), respectively, and subsection

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1 (13) is added to said section, to read:

2 409.912 Cost-effective purchasing of health care.--The
3 agency shall purchase goods and services for Medicaid
4 recipients in the most cost-effective manner consistent with
5 the delivery of quality medical care. The agency shall
6 maximize the use of prepaid per capita and prepaid aggregate
7 fixed-sum basis services when appropriate and other
8 alternative service delivery and reimbursement methodologies,
9 including competitive bidding pursuant to s. 287.057, designed
10 to facilitate the cost-effective purchase of a case-managed
11 continuum of care. The agency shall also require providers to
12 minimize the exposure of recipients to the need for acute
13 inpatient, custodial, and other institutional care and the
14 inappropriate or unnecessary use of high-cost services. The
15 agency may establish prior authorization requirements for
16 certain populations of Medicaid beneficiaries, certain drug
17 classes, or particular drugs to prevent fraud, abuse, overuse,
18 and possible dangerous drug interactions. The Pharmaceutical
19 and Therapeutics Committee shall make recommendations to the
20 agency on drugs for which prior authorization is required. The
21 agency shall inform the Pharmaceutical and Therapeutics
22 Committee of its decisions regarding drugs subject to prior
23 authorization.

24 (13)(a) The agency shall operate the Comprehensive
25 Assessment and Review (CARES) nursing facility preadmission
26 screening program to ensure that Medicaid payment for nursing
27 facility care is made only for individuals whose conditions
28 require such care and to ensure that long-term care services
29 are provided in the setting most appropriate to the needs of
30 the person and in the most economical manner possible. The
31 CARES program shall also ensure that individuals participating

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1 in Medicaid home and community-based waiver programs meet
2 criteria for those programs, consistent with approved federal
3 waivers.

4 (b) The agency may operate the CARES program using its
5 own staff or may contract with another state agency or other
6 provider. If the agency contracts for the operation of the
7 program, the agency must maintain policy control of all
8 operations of the program, including the criteria applied and
9 forms used, and perform regular monitoring to ensure effective
10 and efficient operation of the program and ensure that the
11 operation of the program is consistent with state and federal
12 law and rules.

13 (c) The agency shall develop performance standards for
14 the CARES program.

15 (d) Prior to making payment for nursing facility
16 services for a Medicaid recipient, the agency must verify that
17 the nursing facility preadmission screening program has
18 determined that the individual requires nursing facility care
19 and that the individual cannot be safely served in
20 community-based programs. The nursing facility preadmission
21 screening program shall refer a Medicaid recipient to a
22 community-based program if the individual could be safely
23 served at a lower cost and the recipient chooses to
24 participate in such program.

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

29 1. Rate of diversion to community alternative
30 programs.

31 2. CARES program staffing needs to achieve additional

1 diversions.

2 3. Reasons the program is unable to place individuals
3 in less restrictive settings when such individuals desired
4 such services and could have been served in such settings.

5 4. Barriers to appropriate placement, including
6 barriers due to policies or operations of other agencies or
7 state-funded programs.

8 5. Statutory changes necessary to ensure that
9 individuals in need of long-term care services receive care in
10 the least restrictive environment.

11 Section 14. Section 430.03, Florida Statutes, is
12 amended to read:

13 430.03 Purposes.--The purposes of the Department of
14 Elderly Affairs are to:

15 (1) Serve as the primary state agency responsible for
16 administering human services programs for the elderly ~~and for~~
17 ~~developing policy recommendations for long-term care.~~

18 (2) Combat ageism and create public awareness and
19 understanding of the potentials and needs of elderly persons.

20 (3) Study and plan for programs and services to meet
21 identified and projected needs and to provide opportunities
22 for personal development and achievement of persons aged 60
23 years and older.

24 (4) Advocate quality programs and services for the
25 state's elderly population and on behalf of the individual
26 citizen's needs.

27 ~~(5) Coordinate interdepartmental policy development~~
28 ~~and program planning for all state agencies that provide~~
29 ~~services for the elderly population in order to prevent~~
30 ~~duplicative efforts, to maximize utilization of resources, and~~
31 ~~to ensure cooperation, communication, and departmental~~

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1 ~~linkages.~~

2 ~~(6) Recommend state and local level organizational~~
3 ~~models for the planning, coordination, implementation, and~~
4 ~~evaluation of programs serving the elderly population.~~

5 (5)~~(7)~~ Oversee implementation of federally funded and
6 state-funded programs and services for the state's elderly
7 population.

8 (6)~~(8)~~ Recommend legislative budget requests for
9 programs and services for the state's elderly population.

10 (7)~~(9)~~ Serve as a state-level information
11 clearinghouse and encourage the development of local-level
12 identifiable points of information and referral regarding all
13 federal, state, and local resources of assistance to elderly
14 citizens.

15 (8)~~(10)~~ Assist elderly persons to secure needed
16 services in accordance with personal choice and in a manner
17 that achieves or maintains autonomy and prevents, reduces, or
18 eliminates dependency.

19 (9)~~(11)~~ Promote the maintenance and improvement of the
20 physical well-being and mental health of elderly persons.

21 (10)~~(12)~~ Promote opportunities for volunteerism among
22 the elderly population.

23 (11)~~(13)~~ Promote the prevention of neglect, abuse, or
24 exploitation of elderly persons unable to protect their own
25 interests.

26 (12)~~(14)~~ Eliminate and prevent inappropriate
27 institutionalization of elderly persons by promoting
28 community-based care, home-based care, or other forms of less
29 intensive care.

30 (13)~~(15)~~ Aid in the support of families and other
31 caregivers of elderly persons.

1 ~~(14)(16)~~ Promote intergenerational relationships.
 2 ~~(17)~~ ~~Oversee aging research conducted or funded by any~~
 3 ~~state agency to ensure that such activities are coordinated~~
 4 ~~and directed to fulfill the intent and purposes of this act.~~

5 Section 15. Section 430.04, Florida Statutes, is
 6 amended to read:

7 430.04 Duties and responsibilities of the Department
 8 of Elderly Affairs.--The Department of Elderly Affairs shall:

9 (1) Administer human services and long-term care
 10 programs, including programs funded under the federal Older
 11 Americans Act of 1965, as amended, and other programs that are
 12 assigned to it by law.

13 (2) Be responsible for ensuring that each area agency
 14 on aging operates in a manner to ensure that the elderly of
 15 this state receive the best services possible. The department
 16 shall rescind designation of an area agency on aging or take
 17 intermediate measures against the agency, including corrective
 18 action, unannounced special monitoring, temporary assumption
 19 of operation of one or more programs by the department,
 20 placement on probationary status, imposing a moratorium on
 21 agency action, imposing financial penalties for
 22 nonperformance, or other administrative action pursuant to
 23 chapter 120, if the department finds that:

24 (a) An intentional or negligent act of the agency has
 25 materially affected the health, welfare, or safety of clients,
 26 or substantially and negatively affected the operation of an
 27 aging services program.

28 (b) The agency lacks financial stability sufficient to
 29 meet contractual obligations or that contractual funds have
 30 been misappropriated.

31 (c) The agency has committed multiple or repeated

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1 violations of legal and regulatory requirements or department
2 standards.

3 (d) The agency has failed to continue the provision or
4 expansion of services after the declaration of a state of
5 emergency.

6 (e) The agency has failed to adhere to the terms of
7 its contract with the department.

8 (f) The agency has failed to implement and maintain a
9 department-approved client grievance resolution procedure.

10 (3) Prepare and submit the state plan as required by
11 the United States Administration on Aging, to the Governor,
12 each Cabinet member, the President of the Senate, the Speaker
13 of the House of Representatives, the minority leaders of the
14 House and Senate, and chairpersons of appropriate House and
15 Senate committees a master plan for policies and programs in
16 the state related to aging. The plan must identify and assess
17 the needs of the elderly population in the areas of housing,
18 employment, education and training, medical care, long-term
19 care, preventive care, protective services, social services,
20 mental health, transportation, and long-term care insurance,
21 and other areas considered appropriate by the department. The
22 plan must assess the needs of particular subgroups of the
23 population and evaluate the capacity of existing programs,
24 both public and private and in state and local agencies, to
25 respond effectively to identified needs. If the plan
26 recommends the transfer of any program or service from the
27 Department of Children and Family Services to another state
28 department, the plan must also include recommendations that
29 provide for an independent third-party mechanism, as currently
30 exists in the Florida advocacy councils established in ss.
31 402.165 and 402.166, for protecting the constitutional and

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- 1 ~~human rights of recipients of departmental services. The plan~~
2 ~~must include policy goals and program strategies designed to~~
3 ~~respond efficiently to current and projected needs. The plan~~
4 ~~must also include policy goals and program strategies to~~
5 ~~promote intergenerational relationships and activities.~~
6 ~~Public hearings and other appropriate processes shall be~~
7 ~~utilized by the department to solicit input for the~~
8 ~~development and updating of the master plan from parties~~
9 ~~including, but not limited to, the following:~~
- 10 ~~(a) Elderly citizens and their families and~~
11 ~~caregivers.~~
- 12 ~~(b) Local-level public and private service providers,~~
13 ~~advocacy organizations, and other organizations relating to~~
14 ~~the elderly.~~
- 15 ~~(c) Local governments.~~
- 16 ~~(d) All state agencies that provide services to the~~
17 ~~elderly.~~
- 18 ~~(e) University centers on aging.~~
- 19 ~~(f) Area agency on aging and community care for the~~
20 ~~elderly lead agencies.~~
- 21 (4) Serve as an information clearinghouse at the state
22 level, and assist local-level information and referral
23 resources as a repository and means for dissemination of
24 information regarding all federal, state, and local resources
25 for assistance to the elderly in the areas of, but not limited
26 to, health, social welfare, long-term care, protective
27 services, consumer protection, education and training,
28 housing, employment, recreation, transportation, insurance,
29 and retirement.
- 30 ~~(5) Recommend guidelines for the development of roles~~
31 ~~for state agencies that provide services for the aging, review~~

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1 ~~plans of agencies that provide such services, and relay these~~
2 ~~plans to the Governor, each Cabinet member, the President of~~
3 ~~the Senate, the Speaker of the House of Representatives, the~~
4 ~~minority leaders of the House and Senate, and chairpersons of~~
5 ~~appropriate House and Senate committees.~~

6 ~~(6) Recommend to the Governor, each Cabinet member,~~
7 ~~the President of the Senate, the Speaker of the House of~~
8 ~~Representatives, the minority leaders of the House and Senate,~~
9 ~~and chairpersons of appropriate House and Senate committees an~~
10 ~~organizational framework for the planning, coordination,~~
11 ~~implementation, and evaluation of programs related to aging,~~
12 ~~with the purpose of expanding and improving programs and~~
13 ~~opportunities available to the state's elderly population and~~
14 ~~enhancing a continuum of long-term care. This framework must~~
15 ~~assure that:~~

16 ~~(a) Performance objectives are established.~~

17 ~~(b) Program reviews are conducted statewide.~~

18 ~~(c) Each major program related to aging is reviewed~~
19 ~~every 3 years.~~

20 ~~(d) Agency budget requests reflect the results and~~
21 ~~recommendations of such program reviews.~~

22 ~~(e) Program decisions lead to the distinctive roles~~
23 ~~established for state agencies that provide aging services.~~

24 ~~(7) Advise the Governor, each Cabinet member, the~~
25 ~~President of the Senate, the Speaker of the House of~~
26 ~~Representatives, the minority leaders of the House and Senate,~~
27 ~~and the chairpersons of appropriate House and Senate~~
28 ~~committees regarding the need for and location of programs~~
29 ~~related to aging.~~

30 ~~(8) Review and coordinate aging research plans of all~~
31 ~~state agencies to ensure the conformance of research~~

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1 ~~objectives to issues and needs addressed in the master plan~~
2 ~~for policies and programs related to aging. The research~~
3 ~~activities that must be reviewed and coordinated by the~~
4 ~~department include, but are not limited to, contracts with~~
5 ~~academic institutions, development of educational and training~~
6 ~~curriculums, Alzheimer's disease and other medical research,~~
7 ~~studies of long-term care and other personal assistance needs,~~
8 ~~and design of adaptive or modified living environments.~~

9 ~~(9) Review budget requests for programs related to~~
10 ~~aging for compliance with the master plan for policies and~~
11 ~~programs related to aging before submission to the Governor~~
12 ~~and the Legislature.~~

13 ~~(10) Update the master plan for policies and programs~~
14 ~~related to aging every 3 years.~~

15 ~~(11) Review implementation of the master plan for~~
16 ~~programs and policies related to aging and annually report to~~
17 ~~the Governor, each Cabinet member, the President of the~~
18 ~~Senate, the Speaker of the House of Representatives, the~~
19 ~~minority leaders of the House and Senate, and the chairpersons~~
20 ~~of appropriate House and Senate committees the progress~~
21 ~~towards implementation of the plan.~~

22 ~~(12) Request other departments that administer~~
23 ~~programs affecting the state's elderly population to amend~~
24 ~~their plans, rules, policies, and research objectives as~~
25 ~~necessary to conform with the master plan for policies and~~
26 ~~programs related to aging.~~

27 ~~(5)(13) Hold public meetings regularly throughout the~~
28 ~~state for purposes of receiving information and maximizing the~~
29 ~~visibility of important issues.~~

30 ~~(6)(14) Conduct policy analysis and program evaluation~~
31 ~~studies assigned by the Legislature.~~

1 ~~(7)~~~~(15)~~ Assist the Governor, each Cabinet member, the
 2 President of the Senate, the Speaker of the House of
 3 Representatives, the minority leaders of the House and Senate,
 4 and the chairpersons of appropriate House and Senate
 5 committees in the conduct of their responsibilities in such
 6 capacities as they consider appropriate.

7 ~~(8)~~~~(16)~~ Call upon appropriate agencies of state
 8 government for such assistance as is needed in the discharge
 9 of its duties. All agencies shall cooperate in assisting the
 10 department in carrying out its responsibilities as prescribed
 11 by this section. However, no provision of law with respect to
 12 confidentiality of information may be violated.

13 Section 16. Section 430.041, Florida Statutes, is
 14 created to read:

15 430.041 Office of Long-Term Care Policy.--

16 (1) There is established within the Department of
 17 Elderly Affairs the Office of Long-Term Care Policy to analyze
 18 the state's long-term care system and increase the
 19 availability and the use of noninstitutional settings to
 20 provide care to the elderly and to ensure coordination among
 21 the agencies responsible for the long-term care continuum. The
 22 Department of Elderly Affairs shall provide administrative
 23 support and service to the Office of Long-Term Care Policy.
 24 The office is not subject to control, supervision, or
 25 direction by the Department of Elderly Affairs in the
 26 performance of its duties.

27 (2) The Office of Long-Term Care Policy shall:

28 (a) Ensure close communication and coordination among
 29 state agencies involved in developing and administering a more
 30 efficient and coordinated long-term care service delivery
 31 system in this state.

1 (b) Ensure that state agencies involved in developing
2 long-term care policy have considered the preferences of
3 consumers, providers, and local elected officials.

4 (c) Study and plan for programs to meet identified and
5 projected needs of people who need long-term care.

6 (d) Develop a State Long-Term Care Plan and policy
7 recommendations to ensure that appropriate long-term care is
8 available in institutional and community-based settings.

9 (e) Update the State Long-Term Care Plan every 3
10 years.

11 (f) Recommend state and local organizational models
12 for the planning, coordination, implementation, and evaluation
13 of programs serving people with long-term care needs.

14 (g) Make recommendations to agencies for budget
15 requests for long-term care programs to ensure consistency
16 with the State Long-Term Care Plan.

17 (h) Develop and recommend strategies for ensuring
18 compliance with all federal requirements regarding access to
19 and choice of services and providers.

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

23 (j) Make recommendations to increase consistency in
24 administering the state's long-term care programs.

25 (k) Ensure regular periodic evaluations of all
26 programs providing long-term care services to determine
27 whether the programs are cost-effective, of high quality,
28 operating efficiently, and consistent with state policy.

29 (l) Monitor characteristics of people applying for and
30 entering institutional and community-based long-term care, and
31 changes to these characteristics over time, to determine the

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1 reasons and causes for changing levels of state expenditures
2 and to determine services that the state's system of
3 community-based care could provide to lessen the need for
4 facility-based care.

5 (m) Recommend changes to the preadmission screening
6 system of state nursing homes to ensure that individuals in
7 need of long-term care are served in settings most appropriate
8 to their needs.

9 (n) Recommend mechanisms to encourage families and
10 other caregivers to assist people in need of long-term care
11 services to remain as independent as possible.

12 (o) Analyze waiting lists for long-term care services
13 and recommend strategies to reduce the time applicants wait
14 for services.

15 (p) Oversee research on aging conducted or funded by
16 any state agency to ensure that such research is coordinated
17 and directed to fulfill the intent and purposes of this act.

18 (3) The director of the Office of Long-Term Care
19 Policy shall be appointed by and serve at the pleasure of the
20 Governor. The director of the Office of Long-Term Care Policy
21 shall report to the Governor.

22 (4) The Office of Long-Term Care Policy shall have an
23 advisory board, whose chair is to be selected by the board.
24 The board shall consist of:

25 (a) A member of the Senate, appointed by the President
26 of the Senate.

27 (b) A member of the House of Representatives,
28 appointed by the Speaker of the House of Representatives.

29 (c) The Secretary of Health Care Administration.

30 (d) The Secretary of Elderly Affairs.

31 (e) The state Medicaid Director.

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1 (f) Two representatives of providers of long-term care
2 services for elderly persons, appointed by the Governor.

3 (g) Two representatives of people receiving long-term
4 care services, appointed by the Governor from groups
5 representing elderly persons.

6 (5) Members of the advisory board shall serve without
7 compensation, but are entitled to receive reimbursement for
8 travel and per diem as provided in s. 112.061.

9 (6) The advisory board shall meet at least monthly or
10 more often at the call of its chair or at the request of a
11 majority of its members.

12 (7) The office shall submit a report of its policy,
13 legislative, and funding recommendations to the Governor and
14 the Legislature by January 1 of each year.

15 (8) Personnel who are solely under the direction of
16 the Office of Long-Term Care Policy shall be provided by the
17 Agency for Health Care Administration and the Department of
18 Elderly Affairs. The office shall call upon appropriate
19 agencies of state government, including the centers on aging
20 in the State University System, for assistance needed in
21 discharging its duties. All agencies shall assist the office
22 in carrying out its responsibilities prescribed by this
23 section.

24 Section 17. Section 430.7031, Florida Statutes, is
25 created to read:

26 430.7031 Nursing home transition program.--The
27 department and the Agency for Health Care Administration:

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

31 (2) Shall collaboratively work to identify long-stay

1 nursing home residents who are able to move to community
2 placements, and to provide case management and supportive
3 services to such individuals while they are in nursing homes
4 to assist such individuals in moving to less expensive and
5 less restrictive settings.

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

9 (4) Shall offer such individuals priority placement
10 and services in all home-based and community-based care
11 programs, and shall ensure that funds are available to provide
12 services to individuals to whom services are offered.

13 (5) May seek federal waivers necessary to administer
14 this section.

15 Section 18. Subsection (4) of section 409.908, Florida
16 Statutes, is amended to read:

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

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1 or limit the agency from adjusting fees, reimbursement rates,
2 lengths of stay, number of visits, or number of services, or
3 making any other adjustments necessary to comply with the
4 availability of moneys and any limitations or directions
5 provided for in the General Appropriations Act, provided the
6 adjustment is consistent with legislative intent.

7 (4) Subject to any limitations or directions provided
8 for in the General Appropriations Act, alternative health
9 plans, health maintenance organizations, and prepaid health
10 plans shall be reimbursed a fixed, prepaid amount negotiated,
11 or competitively bid pursuant to s. 287.057, by the agency and
12 prospectively paid to the provider monthly for each Medicaid
13 recipient enrolled. The amount may not exceed the average
14 amount the agency determines it would have paid, based on
15 claims experience, for recipients in the same or similar
16 category of eligibility. The agency shall calculate
17 capitation rates on a regional basis and, beginning September
18 1, 1995, shall include age-band differentials in such
19 calculations. Effective July 1, 2001, the cost of exempting
20 statutory teaching hospitals, specialty hospitals, and
21 community hospital education program hospitals from
22 reimbursement ceilings and the cost of special Medicaid
23 payments shall not be included in premiums paid to health
24 maintenance organizations or prepaid health care plans. Each
25 rate semester, the agency shall calculate and publish a
26 Medicaid hospital rate schedule that does not reflect either
27 special Medicaid payments or the elimination of rate
28 reimbursement ceilings, to be used by hospitals and Medicaid
29 health maintenance organizations, in order to determine the
30 Medicaid rate referred to in ss. 409.912(17)~~409.912(16)~~,
31 409.9128(5), and 641.513(6).

1 Section 19. Section 430.708, Florida Statutes, is
2 amended to read:

3 430.708 Certificate of need.--To ensure that Medicaid
4 community diversion pilot projects result in a reduction in
5 the projected average monthly nursing home caseload, the
6 agency shall, in accordance with the provisions of s.
7 408.034(5)~~s. 408.034(4)~~:

8 (1) Reduce the projected nursing home bed need in each
9 certificate-of-need batching cycle in the community diversion
10 pilot project areas.

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

14 (3) Adopt rules to reduce the number of beds in
15 Medicaid-participating nursing homes eligible for Medicaid,
16 through a Medicaid-selective contracting process or some other
17 appropriate method.

18 (4) Determine the feasibility of increasing the
19 nursing home occupancy threshold used in determining nursing
20 home bed needs under the certificate-of-need process.

21 Section 20. Subsection (4) of section 641.386, Florida
22 Statutes, is amended to read:

23 641.386 Agent licensing and appointment required;
24 exceptions.--

25 (4) All agents and health maintenance organizations
26 shall comply with and be subject to the applicable provisions
27 of ss. 641.309 and 409.912(19)~~409.912(18)~~, and all companies
28 and entities appointing agents shall comply with s. 626.451,
29 when marketing for any health maintenance organization
30 licensed pursuant to this part, including those organizations
31 under contract with the Agency for Health Care Administration

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1 to provide health care services to Medicaid recipients or any
2 private entity providing health care services to Medicaid
3 recipients pursuant to a prepaid health plan contract with the
4 Agency for Health Care Administration.

5 Section 21. By July 1, 2002, the Agency for Health
6 Care Administration shall solicit two private nursing homes,
7 one for-profit and one not-for-profit, in two different
8 geographic areas of the state to participate in a 1-year pilot
9 project to demonstrate the use of electronic monitoring
10 equipment in nursing homes licensed under part II of chapter
11 400, Florida Statutes. If no nursing homes volunteer, the
12 agency shall select the two facilities with the lowest rank in
13 quality-of-care performance under s. 400.191, Florida
14 Statutes, and applicable rules. This selection shall not be
15 subject to review or challenge. If more than two nursing homes
16 apply, the Agency for Health Care Administration shall select
17 two nursing homes, the one with the highest ranking and the
18 one with the lowest ranking in quality-of-care performance
19 under s. 400.191, Florida Statutes, and applicable rules.

20 (1) The nursing homes that participate in the pilot
21 project shall develop policies and procedures that permit each
22 resident or, if appropriate, the resident's legal
23 representative, to request electronic monitoring of the
24 resident's room. The nursing homes that participate in the
25 pilot project shall also install equipment to electronically
26 monitor and shall monitor activities in common areas of the
27 facility. The policies and procedures must include steps to
28 address the privacy and dignity of residents, roommates, and
29 visitors.

30 (2) The request for electronic monitoring of a
31 resident's room must be in writing and signed by the resident

1 or the resident's representative.

2 (a) If a resident has the capacity to request
3 electronic monitoring and has not been judicially declared to
4 lack the required capacity, only the resident may request the
5 electronic monitoring, notwithstanding the terms of any
6 durable power of attorney or similar instrument.

7 (b) If a resident has been judicially declared to lack
8 the capacity required to request electronic monitoring, only
9 the guardian of the resident may request electronic
10 monitoring.

11 (c) If a resident does not have the capacity to
12 request electronic monitoring and has not been judicially
13 declared to lack the required capacity, the resident's
14 physician may make the determination regarding the capacity of
15 the resident to request electronic monitoring and must
16 document the determination in the resident's clinical record.

17 In that case, only the legal representative of the resident
18 may request the electronic monitoring. A person from the
19 following list, in order of priority, may act as the
20 resident's legal representative for the limited purpose of
21 requesting electronic monitoring of the resident's room.

22 1. A person named in the resident's medical power of
23 attorney or other advance directive.

24 2. The resident's spouse.

25 3. An adult child of the resident who has the waiver
26 and consent of all other qualified adult children of the
27 resident to act as the sole decision-maker.

28 4. A majority of the resident's reasonably available
29 adult children.

30 5. The resident's parents.

31 6. The individual clearly identified as suitable to

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1 act for the resident by the resident before the resident
2 became incapacitated or the resident's nearest living
3 relative.

4 (3) A resident, or resident's legal representative,
5 who wishes to conduct electronic monitoring must obtain the
6 written, signed consent of other residents in the room. The
7 written consent must be submitted to the administrator of the
8 nursing home or his or her designee.

9 (a) Consent of other residents may be given only by:

10 1. The other resident or residents in the room;
11 2. The guardian of the other resident, if the resident
12 has been judicially declared to lack the required capacity; or

13 3. The legal representative of the other resident,
14 determined by following the same procedure established under
15 (2)(c).

16 (b) Another resident in the room may condition consent
17 on:

18 1. Pointing the camera away from the consenting
19 resident, when the proposed electronic monitoring device is a
20 video surveillance camera; and

21 2. Limiting or prohibiting the use of an audio
22 electronic monitoring device.

23 (c) Electronic monitoring must be conducted in
24 accordance with any limitations placed on the monitoring as a
25 condition of the consent given by or on behalf of another
26 resident of the room.

27 (4) When the request for electronic monitoring and all
28 required consents have been given to the nursing home
29 administrator or his or her designee, electronic monitoring
30 may begin. If electronic monitoring is being conducted in a
31 resident's room, and another resident is moved into the room

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1 who has not yet consented to electronic monitoring, the
2 monitoring must cease until the new resident, or the
3 resident's legal representative, consents.

4 (5) Anyone conducting electronic monitoring must post
5 and maintain a conspicuous notice at the entrance to the
6 resident's room stating that the room is being monitored by an
7 electronic monitoring device. The nursing homes participating
8 in the pilot project must post a notice in a prominent
9 location in common areas that the areas are being
10 electronically monitored.

11 (6) The resident or resident's legal representative
12 who requests the electronic monitoring of the resident's room
13 is responsible for the costs associated with conducting
14 electronic monitoring in the resident's room, including the
15 equipment and tapes and the installation, maintenance, or
16 removal of the equipment, other than the costs of electricity.
17 The electronic monitoring equipment and tapes must be the
18 property of the resident. The nursing home must make
19 reasonable physical accommodation for electronic monitoring
20 which includes:

21 (a) A reasonably secure place to mount the video
22 surveillance camera or other electronic monitoring device; and

23 (b) Access to power sources for the video surveillance
24 camera or other electronic monitoring device.

25 (7) The nursing home may:

26 (a) Require an electronic monitoring device to be
27 installed in a manner that is safe for residents, employees,
28 or visitors who may be moving about the room and that meets
29 all local and state regulations;

30 (b) Require the electronic monitoring to be conducted
31 in plain view; and

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1 (c) Place a resident in a different room to
2 accommodate a request for electronic monitoring.

3 (8) A participating nursing home may not refuse to
4 admit an individual and may not discharge a resident solely
5 because of a request to conduct electronic monitoring.

6 (9) Any questionable activity discovered as a result
7 of viewing a tape produced by the electronic monitoring
8 equipment shall be reported to the nursing home's
9 administrator and the Agency for Health Care Administration
10 within 24 hours after discovery of the questionable activity.

11 (a) When a questionable activity that occurred in a
12 resident's room has been reported to the nursing home
13 administrator and the Agency for Health Care Administration,
14 the nursing home administrator shall arrange a meeting for
15 viewing or listening to the recording of the activity as soon
16 as is practicable. The following persons must be at the
17 meeting:

18 1. The resident or the resident's legal
19 representative;

20 2. A long-term care ombudsman, if requested by the
21 resident or the resident's legal representative;

22 3. A quality-of-care monitor from the Agency for
23 Health Care Administration;

24 4. The nursing home's designated risk manager; and

25 5. The nursing home administrator.

26 (b) When a questionable activity that has purportedly
27 occurred in a common area of the nursing home is reported to
28 the nursing home administrator and the Agency for Health Care
29 Administration, the nursing home administrator shall arrange a
30 meeting for viewing or listening to the recording of the
31 activity as soon as is practicable. The following persons must

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1 be at the meeting:

2 1. The resident or residents involved in the
3 questionable activity, or the resident's or residents' legal
4 representatives;

5 2. A long-term care ombudsman, if requested by the
6 resident or the resident's legal representative;

7 3. A representative of the nursing home's resident
8 council;

9 4. A quality-of-care monitor from the Agency for
10 Health Care Administration;

11 5. The nursing home's designated risk manager; and

12 6. The nursing home administrator.

13 (c) The purpose of such a meeting is to facilitate
14 discussion of the quality of care being provided to the
15 resident and, if necessary, how to improve the quality of care
16 being provided.

17 (d) The Agency for Health Care Administration may take
18 any regulatory action authorized under part II of chapter 400,
19 Florida Statutes, in response to a questionable activity
20 documented through electronic monitoring and reported to the
21 agency.

22 (10) Because of the nature of the pilot project, any
23 activity or information recorded on tape shall be used to
24 improve care and is not admissible as evidence in civil
25 litigation against the nursing home, a licensed health care
26 practitioner, or staff of the nursing home.

27 (11) Each nursing home that participates in the pilot
28 project shall receive the sum of \$10,000 to:

29 (a) Research and purchase an electronic monitoring
30 system for common areas which would tape activities in the
31 common areas so as to minimize security risks; and

1 (b) Submit 6-month progress reports to the Agency for
2 Health Care Administration on the status of the pilot project.
3 The reports must describe efforts by the nursing home to
4 inform residents and their legal representatives of the
5 circumstances under which electronic monitoring equipment will
6 be installed in residents' rooms; must provide an evaluation
7 of resident, family, and staff response to the availability
8 and use of electronic monitoring equipment; and must document
9 staff turnover and changes in liability insurance premiums and
10 deductibles attributed to the use of electronic monitoring
11 equipment.

12 (12) The nursing homes that participate in the pilot
13 project are entitled to a one-time rebasing of operating costs
14 under the Medicaid program to cover any increased costs in
15 liability insurance because of the installation of the
16 electronic monitoring equipment during the 12 months that the
17 pilot project is in effect and for 6 months thereafter.

18 (13) The Agency for Health Care Administration shall
19 convene a panel to advise the agency as it reviews the outcome
20 of the pilot project and produces a report. The panel shall be
21 comprised of a representative of the American Association of
22 Retired Persons, a member of the clergy, a registered nurse, a
23 physician licensed under chapter 458 or chapter 459, Florida
24 Statutes, a long-term care ombudsman, a representative of the
25 Agency for Health Care Administration, and a representative of
26 the Office of the Attorney General. The Agency for Health Care
27 Administration shall submit to the Governor, the President of
28 the Senate, and the Speaker of the House of Representatives,
29 by October 1, 2003, a report on the outcome of the pilot
30 project.

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

705-165AXC-08

Amendment No. ____ (for drafter's use only)

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

2 And the title is amended as follows:

3 remove: the entire title

4

5 and insert:

6 A bill to be entitled

7 An act relating to long-term care; amending s.

8 20.41, F.S.; providing for administration of

9 the State Long-Term Care Ombudsman Council by

10 the Department of Elderly Affairs; amending s.

11 400.0063, F.S.; locating the Office of the

12 State Long-Term Care Ombudsman in the

13 department; providing for appointment of the

14 ombudsman by the Secretary of Elderly Affairs;

15 amending s. 400.0065, F.S.; requiring the

16 secretary's approval of staff for the local

17 ombudsman councils; deleting requirement that

18 the ombudsman prepare an annual legislative

19 budget request; revising rulemaking authority;

20 amending s. 400.0067, F.S.; revising duties of

21 the State Long-Term Care Ombudsman Council;

22 providing duties of the department and

23 secretary; amending s. 400.0071, F.S.; revising

24 procedures relating to complaints; amending s.

25 400.0087, F.S.; revising provisions relating to

26 agency oversight; amending s. 400.0089, F.S.;

27 revising reporting responsibilities; repealing

28 s. 400.0066(2) and (3), F.S., relating to

29 administrative support for the ombudsman

30 program and interference with ombudsman staff

31 or volunteers; creating s. 409.221, F.S.;

1 creating the "Florida Consumer-Directed Care
2 Act"; providing legislative findings; providing
3 legislative intent; establishing the
4 consumer-directed care program; providing for
5 consumer selection of certain long-term care
6 services and providers; providing for
7 interagency agreements between the Agency for
8 Health Care Administration and the Department
9 of Elderly Affairs, the Department of Health,
10 and the Department of Children and Family
11 Services; providing for program eligibility and
12 enrollment; providing definitions; providing
13 for consumer budget allowances and purchasing
14 guidelines; specifying authorized services;
15 providing roles and responsibilities of
16 consumers, the agency and departments, and
17 fiduciary intermediaries; providing background
18 screening requirements for persons who render
19 care under the program; providing rulemaking
20 authority of the agency and departments;
21 requiring the agency to apply for federal
22 waivers as necessary; requiring ongoing program
23 reviews and annual reports; requiring the
24 Agency for Health Care Administration and the
25 Department of Elderly Affairs to submit a plan
26 to the Governor and Legislature for reducing
27 nursing home bed days funded under the Medicaid
28 program; amending s. 400.179, F.S.; providing
29 an exception from a bond requirement for
30 certain mortgage arrangements; amending s.
31 408.034, F.S.; providing additional

1 requirements for the Agency for Health Care
2 Administration in determining the need for
3 additional nursing facility beds; amending s.
4 409.912, F.S.; requiring the Agency for Health
5 Care Administration to establish a nursing
6 facility preadmission screening program;
7 authorizing the agency to operate the program
8 by contract; requiring an annual report to the
9 Legislature and the Office of Long-Term Care
10 Policy; amending s. 430.03, F.S.; revising the
11 purposes of the Department of Elderly Affairs
12 with respect to developing policy, making
13 recommendations, coordinating activities, and
14 overseeing research; amending s. 430.04, F.S.;
15 revising the duties of the Department of
16 Elderly Affairs with respect to developing
17 programs and policies related to aging;
18 creating s. 430.041, F.S.; establishing the
19 Office of Long-Term Care Policy within the
20 Department of Elderly Affairs; requiring the
21 office to develop a State Long-Term Care Plan;
22 requiring the office to make recommendations
23 for coordinating the services provided by state
24 agencies; providing for appointment of the
25 director of the Office of Long-Term Care
26 Policy; providing for the appointment of an
27 advisory board to the Office of Long-Term Care
28 Policy; specifying membership in the advisory
29 board; providing for reimbursement of per diem
30 and travel expenses for members of the advisory
31 board; requiring that the office submit an

705-165AXC-08

Bill No. HB 703

Amendment No. ____ (for drafter's use only)

1 annual report to the Governor and Legislature;
2 requiring the Agency for Health Care
3 Administration and the Department of Elderly
4 Affairs to provide staff and support services
5 for the Office of Long-Term Care Policy;
6 creating s. 430.7031, F.S.; requiring the
7 Department of Elderly Affairs and the Agency
8 for Health Care Administration to implement a
9 nursing home transition program; providing
10 requirements for the program; amending ss.
11 409.908, 430.708, and 641.386, F.S., relating
12 to reimbursement of Medicaid providers,
13 certificates of need, and agent licensing and
14 appointment; conforming cross references to
15 changes made by the act; requiring the Agency
16 for Health Care Administration to conduct a
17 pilot project to demonstrate the use of
18 electronic monitoring equipment in nursing
19 homes; establishing requirements for nursing
20 homes participating in the pilot project;
21 establishing procedures for the use of
22 electronic monitoring equipment; specifying who
23 may request electronic monitoring; providing
24 for conditional consent to electronic
25 monitoring; providing for review of tapes
26 documenting questionable activity; prohibiting
27 the admission of tapes as evidence in civil
28 litigation against a nursing home, a licensed
29 health care practitioner, or staff of a nursing
30 home; providing for rebasing of Medicaid costs;
31 requiring the Agency for Health Care

705-165AXC-08

Bill No. HB 703

Amendment No. ____ (for drafter's use only)

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Administration to convene an advisory panel;
requiring a report; providing an effective
date.