

1                                   A bill to be entitled  
2           An act relating to long-term care; creating s.  
3           409.221, F.S.; creating the "Florida  
4           Consumer-Directed Care Act"; providing  
5           legislative findings; providing legislative  
6           intent; establishing the consumer-directed care  
7           program; providing for consumer selection of  
8           certain long-term care services and providers;  
9           providing for interagency agreements among the  
10          Agency for Health Care Administration and the  
11          Department of Elderly Affairs, the Department  
12          of Health, and the Department of Children and  
13          Family Services; providing for program  
14          eligibility and enrollment; providing  
15          definitions; providing for consumer budget  
16          allowances and purchasing guidelines;  
17          specifying authorized services; providing roles  
18          and responsibilities of consumers, the agency  
19          and departments, and fiduciary intermediaries;  
20          providing background screening requirements for  
21          persons who render care under the program;  
22          providing rulemaking authority of the agency  
23          and departments; requiring the agency to apply  
24          for federal waivers as necessary; requiring  
25          ongoing program reviews and annual reports;  
26          requiring the Agency for Health Care  
27          Administration and the Department of Elderly  
28          Affairs to submit a plan to the Governor and  
29          Legislature for reducing nursing home bed days  
30          funded under the Medicaid program; 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.; authorizing the Agency for  
 5 Health Care Administration to contract with  
 6 vendors on a risk-sharing basis for in-home  
 7 physician services; requiring the Agency for  
 8 Health Care Administration to establish a  
 9 nursing facility preadmission screening program  
 10 through an interagency agreement with the  
 11 Department of Elderly Affairs; requiring an  
 12 annual report to the Legislature and the Office  
 13 of Long-Term Care Policy; creating s. 430.041,  
 14 F.S.; establishing the Office of Long-Term Care  
 15 Policy within the Department of Elderly  
 16 Affairs; requiring the office to make  
 17 recommendations for coordinating the services  
 18 provided by state agencies; providing for the  
 19 appointment of a director and an advisory  
 20 council to the Office of Long-Term Care Policy;  
 21 specifying membership and duties of the  
 22 director and advisory council; providing for  
 23 reimbursement of per diem and travel expenses  
 24 for members of the advisory council; requiring  
 25 that the office submit an annual report to the  
 26 Governor and Legislature; requiring assistance  
 27 to the office by state agencies and  
 28 universities; creating s. 430.7031, F.S.;  
 29 requiring the Department of Elderly Affairs and  
 30 the Agency for Health Care Administration to  
 31 implement a nursing home transition program;

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

1 400.0091, F.S.; specifying training  
2 requirements for employees of the Office of the  
3 State Long-Term Care Ombudsman and its  
4 volunteers; amending s. 400.179, F.S.;  
5 providing an exemption from certain  
6 requirements that the transferor of a nursing  
7 facility maintain a bond; amending s. 477.025,  
8 F.S.; exempting certain facilities from a  
9 provision of law requiring licensing as a  
10 cosmetology salon; amending s. 627.9408, F.S.;  
11 authorizing the department to adopt by rule  
12 certain provisions of the Long-Term Care  
13 Insurance Model Regulation, as adopted by the  
14 National Association of Insurance  
15 Commissioners; repealing s. 400.0066(2) and  
16 (3), F.S., relating to the Office of State  
17 Long-Term Care Ombudsman; deleting a  
18 prohibition on interference with the official  
19 duty of any ombudsman staff or volunteers;  
20 deleting reference to administrative support by  
21 the Department of Elderly Affairs; providing an  
22 effective date.

23  
24 Be It Enacted by the Legislature of the State of Florida:

25  
26 Section 1. Section 409.221, Florida Statutes, is  
27 created to read:

28 409.221 Consumer-directed care program.--  
29 (1) SHORT TITLE.--This section may be cited as the  
30 "Florida Consumer-Directed Care Act."

31

1           (2) LEGISLATIVE FINDINGS.--The Legislature finds that  
2 alternatives to institutional care, such as in-home and  
3 community-based care, should be encouraged. The Legislature  
4 finds that giving recipients of in-home and community-based  
5 services the opportunity to select the services they need and  
6 the providers they want, including family and friends,  
7 enhances their sense of dignity and autonomy. The Legislature  
8 also finds that providing consumers choice and control, as  
9 tested in current research and demonstration projects, has  
10 been beneficial and should be developed further and  
11 implemented statewide.

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

19           (4) CONSUMER-DIRECTED CARE.--

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

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

6           (c) Definitions.--For purposes of this section, the  
7 term:

8           1. "Budget allowance" means the amount of money made  
9 available each month to a consumer to purchase needed  
10 long-term care services, based on the results of a functional  
11 needs assessment.

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

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

18           4. "Fiscal intermediary" means an entity approved by  
19 the agency that helps the consumer manage the consumer's  
20 budget allowance, retains the funds, processes employment  
21 information, if any, and tax information, reviews records to  
22 ensure correctness, writes paychecks to providers, and  
23 delivers paychecks to the consumer for distribution to  
24 providers and caregivers.

25           5. "Provider" means:

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

29           b. A consumer-employed caregiver for whom the consumer  
30 is the employer of record.

31

1           6. "Representative" means an uncompensated individual  
2 designated by the consumer to assist in managing the  
3 consumer's budget allowance and needed services.

4           (d) Budget allowances.--Consumers enrolled in the  
5 program shall be given a monthly budget allowance based on the  
6 results of their assessed functional needs and the financial  
7 resources of the program. Consumers shall receive the budget  
8 allowance directly from an agency-approved fiscal  
9 intermediary. Each department shall develop purchasing  
10 guidelines, approved by the agency, to assist consumers in  
11 using the budget allowance to purchase needed, cost-effective  
12 services.

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

18           1. Personal care.

19           2. Homemaking and chores, including housework, meals,  
20 shopping, and transportation.

21           3. Home modifications and assistive devices which may  
22 increase the consumer's independence or make it possible to  
23 avoid institutional placement.

24           4. Assistance in taking self-administered medication.

25           5. Day care and respite care services, including those  
26 provided by nursing home facilities pursuant to s. 400.141(6)  
27 or by adult day care facilities licensed pursuant to s.  
28 400.554.

29           6. Personal care and support services provided in an  
30 assisted living facility.

31

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

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

8           a. Developing a job description.

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

11           c. Communicating needs, preferences, and expectations  
12 about services being purchased.

13           d. Providing the fiscal intermediary with all  
14 information necessary for provider payments and tax  
15 requirements.

16           e. Ending the employment of an unsatisfactory  
17 caregiver.

18           2. In cases where a consumer is not the employer of  
19 record, the consumer's roles and responsibilities include, but  
20 are not limited to, the following:

21           a. Communicating needs, preferences, and expectations  
22 about services being purchased.

23           b. Ending the services of an unsatisfactory provider.

24           c. Providing the fiscal agent with all information  
25 necessary for provider payments and tax requirements.

26           (g) Agency and departments roles and  
27 responsibilities.--The agency's and the departments' roles and  
28 responsibilities include, but are not limited to, the  
29 following:



1           1. Assessing each consumer's functional needs, helping  
2 with the service plan, and providing ongoing assistance with  
3 the service plan.

4           2. Offering the services of consultants who shall  
5 provide training, technical assistance, and support to the  
6 consumer.

7           3. Completing the background screening for providers.

8           4. Approving fiscal intermediaries.

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

12           (h) Fiscal intermediary roles and  
13 responsibilities.--The fiscal intermediary's roles and  
14 responsibilities include, but are not limited to, the  
15 following:

16           1. Providing recordkeeping services.

17           2. Retaining the consumer-directed care funds,  
18 processing employment and tax information, if any, reviewing  
19 records to ensure correctness, writing paychecks to providers,  
20 and delivering paychecks to the consumer for distribution.

21           (i) Background screening requirements.--All persons  
22 who render care under this section shall comply with the  
23 requirements of s. 435.05. Persons shall be excluded from  
24 employment pursuant to s. 435.06.

25           1. Persons excluded from employment may request an  
26 exemption from disqualification, as provided in s. 435.07.  
27 Persons not subject to certification or professional licensure  
28 may request an exemption from the agency. In considering a  
29 request for an exemption, the agency shall comply with the  
30 provisions of s. 435.07.

31

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

4  
5 For purposes of this section, a person who has undergone  
6 screening, who is qualified for employment under this section  
7 and applicable rule, and who has not been unemployed for more  
8 than 180 days following such screening is not required to be  
9 rescreened. Such person must attest under penalty of perjury  
10 to not having been convicted of a disqualifying offense since  
11 completing such screening.

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

14           1. The agency and the Departments of Elderly Affairs,  
15 Health, and Children and Family Services are authorized to  
16 adopt and enforce rules.

17           2. The agency shall take all necessary action to  
18 ensure state compliance with federal regulations. The agency  
19 shall apply for any necessary federal waivers or waiver  
20 amendments needed to implement the program.

21           (k) Reviews and reports.--The agency and the  
22 Departments of Elderly Affairs, Health, and Children and  
23 Family Services shall each, on an ongoing basis, review and  
24 assess the implementation of the consumer-directed care  
25 program. By January 15 of each year, the agency shall submit a  
26 written report to the Legislature that includes each  
27 department's review of the program and contains  
28 recommendations for improvements to the program.

29           Section 2. (1) Prior to December 1, 2002, the Agency  
30 for Health Care Administration, in consultation with the  
31 Department of Elderly Affairs, shall submit to the Governor,

1 the President of the Senate, and the Speaker of the House of  
2 Representatives a plan to reduce the number of nursing home  
3 bed days purchased by the state Medicaid program and to  
4 replace such nursing home care with care provided in less  
5 costly alternative settings.

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

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

12 Section 3. Section 408.034, Florida Statutes, is  
13 amended to read:

14 408.034 Duties and responsibilities of agency;  
15 rules.--

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

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

30 (3) The agency shall establish, by rule, uniform need  
31 methodologies for health services and health facilities. In

1 developing uniform need methodologies, the agency shall, at a  
 2 minimum, consider the demographic characteristics of the  
 3 population, the health status of the population, service use  
 4 patterns, standards and trends, geographic accessibility, and  
 5 market economics.

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

20 ~~(5)(4)~~ The agency shall establish by rule a  
 21 nursing-home-bed-need methodology that reduces the community  
 22 nursing home bed need for the areas of the state where the  
 23 agency establishes pilot community diversion programs through  
 24 the Title XIX aging waiver program.

25 ~~(6)(5)~~ The agency may adopt rules necessary to  
 26 implement ss. 408.031-408.045.

27 Section 4. Paragraph (f) of subsection (3) of section  
 28 409.912, Florida Statutes, is amended, and present subsections  
 29 (13) through (39) of said section are renumbered as  
 30 subsections (14) through (40), respectively, and a new  
 31 subsection (13) is added to that section, to read:

1           409.912 Cost-effective purchasing of health care.--The  
2 agency shall purchase goods and services for Medicaid  
3 recipients in the most cost-effective manner consistent with  
4 the delivery of quality medical care. The agency shall  
5 maximize the use of prepaid per capita and prepaid aggregate  
6 fixed-sum basis services when appropriate and other  
7 alternative service delivery and reimbursement methodologies,  
8 including competitive bidding pursuant to s. 287.057, designed  
9 to facilitate the cost-effective purchase of a case-managed  
10 continuum of care. The agency shall also require providers to  
11 minimize the exposure of recipients to the need for acute  
12 inpatient, custodial, and other institutional care and the  
13 inappropriate or unnecessary use of high-cost services. The  
14 agency may establish prior authorization requirements for  
15 certain populations of Medicaid beneficiaries, certain drug  
16 classes, or particular drugs to prevent fraud, abuse, overuse,  
17 and possible dangerous drug interactions. The Pharmaceutical  
18 and Therapeutics Committee shall make recommendations to the  
19 agency on drugs for which prior authorization is required. The  
20 agency shall inform the Pharmaceutical and Therapeutics  
21 Committee of its decisions regarding drugs subject to prior  
22 authorization.

23           (3) The agency may contract with:

24           (f) An entity that provides in-home physician services  
25 to test the cost-effectiveness of enhanced home-based medical  
26 care to Medicaid recipients with degenerative neurological  
27 diseases and other diseases or disabling conditions associated  
28 with high costs to Medicaid. The program shall be designed to  
29 serve very disabled persons and to reduce Medicaid reimbursed  
30 costs for inpatient, outpatient, and emergency department  
31 services. The agency shall contract with vendors on a

1 ~~risk-sharing basis in Pasco County or Pinellas County that~~  
2 ~~provides in-home physician services to Medicaid recipients~~  
3 ~~with degenerative neurological diseases in order to test the~~  
4 ~~cost-effectiveness of enhanced home-based medical care. The~~  
5 ~~entity providing the services shall be reimbursed on a~~  
6 ~~fee-for-service basis at a rate not less than comparable~~  
7 ~~Medicare reimbursement rates. The agency may apply for waivers~~  
8 ~~of federal regulations necessary to implement such program.~~  
9 ~~This paragraph shall be repealed on July 1, 2002.~~

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

21 (b) The agency shall operate the CARES program through  
22 an interagency agreement with the Department of Elderly  
23 Affairs.

24 (c) Prior to making payment for nursing facility  
25 services for a Medicaid recipient, the agency must verify that  
26 the nursing facility preadmission screening program has  
27 determined that the individual requires nursing facility care  
28 and that the individual cannot be safely served in  
29 community-based programs. The nursing facility preadmission  
30 screening program shall refer a Medicaid recipient to a  
31 community-based program if the individual could be safely

1 served at a lower cost and the recipient chooses to  
2 participate in such program.

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

7 1. Rate of diversion to community alternative  
8 programs;

9 2. CARES program staffing needs to achieve additional  
10 diversions;

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

14 4. Barriers to appropriate placement, including  
15 barriers due to policies or operations of other agencies or  
16 state-funded programs; and

17 5. Statutory changes necessary to ensure that  
18 individuals in need of long-term care services receive care in  
19 the least restrictive environment.

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

22 430.041 Office of Long-Term Care Policy.--

23 (1) There is established in the Department of Elderly  
24 Affairs the Office of Long-Term Care Policy to evaluate the  
25 state's long-term care service delivery system and make  
26 recommendations to increase the availability and the use of  
27 noninstitutional settings to provide care to the elderly and  
28 ensure coordination among the agencies responsible for the  
29 long-term care continuum.

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

1           (a) Ensure close communication and coordination among  
2 state agencies involved in developing and administering a more  
3 efficient and coordinated long-term care service delivery  
4 system in this state.

5           (b) Identify duplication and unnecessary service  
6 provision in the long-term care system and make  
7 recommendations to decrease inappropriate service provision.

8           (c) Review current programs providing long-term care  
9 services to determine whether the programs are cost effective,  
10 of high quality, and operating efficiently and make  
11 recommendations to increase consistency and effectiveness in  
12 the state's long-term care programs.

13           (d) Develop strategies for promoting and implementing  
14 cost-effective home and community-based services as an  
15 alternative to institutional care which coordinate and  
16 integrate the continuum of care needs of the elderly.

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

19           (3) The Director of the Office of Long-Term Care  
20 Policy shall be appointed by, and serve at the pleasure of,  
21 the Governor. The director shall report to, and be under the  
22 general supervision of, the Secretary of Elderly Affairs and  
23 shall not be subject to supervision by any other employee of  
24 the department.

25           (4) The Office of Long-Term Care Policy shall have an  
26 advisory council, whose chair shall be the Director of the  
27 Office of Long-Term Care Policy. The purposes of the advisory  
28 council are to provide assistance and direction to the office  
29 and to ensure that the appropriate state agencies are properly  
30 implementing recommendations from the office.

31           (a) The advisory council shall consist of:



- 1           1. A member of the Senate, appointed by the President  
2 of the Senate.
- 3           2. A member of the House of Representatives, appointed  
4 by the Speaker of the House of Representatives.
- 5           3. The Director of the Office of Long-Term Care  
6 Policy.
- 7           4. The Secretary of Health Care Administration.
- 8           5. The Secretary of Elderly Affairs.
- 9           6. The Secretary of Children and Family Services.
- 10          7. The Secretary of Health.
- 11          8. The Executive Director of the Department of  
12 Veterans' Affairs.
- 13          9. A representative of the Florida Association of Area  
14 Agencies on Aging, appointed by the Governor.
- 15          10. A representative of the Florida Association of  
16 Aging Service Providers, appointed by the Governor.
- 17          11. Three persons possessing broad knowledge and  
18 experience in the delivery of long-term care services,  
19 appointed by the Governor.
- 20          12. Two representatives of persons using long-term  
21 care services, appointed by the Governor from groups  
22 representing elderly persons.
- 23           (b) Members shall serve without compensation but are  
24 entitled to receive reimbursement for travel and per diem as  
25 provided in s. 112.061.
- 26           (c) The advisory council shall meet at the call of its  
27 chair or at the request of a majority of its members. During  
28 its first year of existence, the advisory council shall meet  
29 at least monthly.
- 30           (d) Members of the advisory council appointed by the  
31 Governor shall serve at the pleasure of the Governor and shall

1 be appointed to 4-year staggered terms in accordance with s.  
2 20.052.

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

6 (b) The office shall call upon appropriate agencies of  
7 state government, including the centers on aging in the State  
8 University System, for assistance needed in discharging its  
9 duties.

10 (c) Each state agency represented on the Office of  
11 Long-Term Care Policy Advisory Council shall make at least one  
12 employee available to work with the Office of Long-Term Care  
13 Policy. All state agencies and universities shall assist the  
14 office in carrying out its responsibilities prescribed by this  
15 section.

16 (d) Each state agency shall pay from its own funds any  
17 expenses related to its support of the Office of Long-Term  
18 Care Policy and its participation on the advisory council. The  
19 Department of Elderly Affairs shall be responsible for  
20 expenses related to participation on the advisory council by  
21 members appointed by the Governor.

22 (6)(a) By December 1, 2002, the office shall submit to  
23 the advisory council a preliminary report of its findings and  
24 recommendations on improving the long-term care continuum in  
25 this state. The report must contain recommendations and  
26 implementation proposals for policy changes, as well as  
27 legislative and funding recommendations that will make the  
28 system more effective and efficient. The report shall contain  
29 a specific plan for accomplishing the recommendations and  
30 proposals. Thereafter, the office shall revise and update the  
31

1 report annually and resubmit it to the advisory council for  
2 review and comments by November 1 of each year.

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

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

15 Section 6. Section 430.7031, Florida Statutes, is  
16 created to read:

17 430.7031 Nursing home transition program.--The  
18 department and the Agency for Health Care Administration:

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

22 (2) Shall collaboratively work to identify long-stay  
23 nursing home residents who are able to move to community  
24 placements, and to provide case management and supportive  
25 services to such individuals while they are in nursing homes  
26 to assist such individuals in moving to less expensive and  
27 less restrictive settings.

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

31

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

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

7           Section 7. Subsection (4) of section 409.908, Florida  
8 Statutes, is amended to read:

9           409.908 Reimbursement of Medicaid providers.--Subject  
10 to specific appropriations, the agency shall reimburse  
11 Medicaid providers, in accordance with state and federal law,  
12 according to methodologies set forth in the rules of the  
13 agency and in policy manuals and handbooks incorporated by  
14 reference therein. These methodologies may include fee  
15 schedules, reimbursement methods based on cost reporting,  
16 negotiated fees, competitive bidding pursuant to s. 287.057,  
17 and other mechanisms the agency considers efficient and  
18 effective for purchasing services or goods on behalf of  
19 recipients. Payment for Medicaid compensable services made on  
20 behalf of Medicaid eligible persons is subject to the  
21 availability of moneys and any limitations or directions  
22 provided for in the General Appropriations Act or chapter 216.  
23 Further, nothing in this section shall be construed to prevent  
24 or limit the agency from adjusting fees, reimbursement rates,  
25 lengths of stay, number of visits, or number of services, or  
26 making any other adjustments necessary to comply with the  
27 availability of moneys and any limitations or directions  
28 provided for in the General Appropriations Act, provided the  
29 adjustment is consistent with legislative intent.

30           (4) Subject to any limitations or directions provided  
31 for in the General Appropriations Act, alternative health

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

24 Section 8. Section 430.708, Florida Statutes, is  
 25 amended to read:

26 430.708 Certificate of need.--To ensure that Medicaid  
 27 community diversion pilot projects result in a reduction in  
 28 the projected average monthly nursing home caseload, the  
 29 agency shall, in accordance with the provisions of s.  
 30 408.034(5)~~s. 408.034(4)~~:

31

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

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

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

11           (4) Determine the feasibility of increasing the  
12 nursing home occupancy threshold used in determining nursing  
13 home bed needs under the certificate-of-need process.

14           Section 9. Subsection (4) of section 641.386, Florida  
15 Statutes, is amended to read:

16           641.386 Agent licensing and appointment required;  
17 exceptions.--

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

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

31

1           20.41 Department of Elderly Affairs.--There is created  
2 a Department of Elderly Affairs.

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

12           Section 11. Subsection (1) and paragraph (b) of  
13 subsection (2) of section 400.0063, Florida Statutes, are  
14 amended to read:

15           400.0063 Establishment of Office of State Long-Term  
16 Care Ombudsman; designation of ombudsman and legal advocate.--

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

20           (2)

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

27           Section 12. Paragraphs (c) and (f) of subsection (2)  
28 and subsection (3) of section 400.0065, Florida Statutes, are  
29 amended to read:

30           400.0065 State Long-Term Care Ombudsman; duties and  
31 responsibilities; conflict of interest.--

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

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

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

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

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

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

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

27  
28 The Department of Elderly Affairs, ~~in consultation with the~~  
29 ~~ombudsman~~, shall adopt rules to establish procedures to  
30 identify and eliminate conflicts of interest as described in  
31 this subsection.



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

4           400.0067 Establishment of State Long-Term Care  
5 Ombudsman Council; duties; membership.--

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

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

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

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

24           (f)(g) Prepare an annual report describing the  
25 activities carried out by the ombudsman and the State  
26 Long-Term Care Ombudsman Council in the year for which the  
27 report is prepared. The State Long-Term Care Ombudsman  
28 Council shall submit the report to the Secretary of Elderly  
29 Affairs. The secretary shall in turn submit the report to the  
30 Commissioner of the United States Administration on Aging, the  
31 Governor, the President of the Senate, the Speaker of the

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

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

11 2. Evaluate the problems experienced by residents of  
12 long-term care facilities.

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

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

26 5. Provide policy and regulatory and legislative  
27 recommendations to solve identified problems; resolve  
28 residents' complaints; improve the quality of care and life of  
29 the residents; protect the health, safety, welfare, and rights  
30 of the residents; and remove the barriers to the optimal  
31 operation of the state long-term care ombudsman program.

1           6. Contain recommendations from the local ombudsman  
2 councils regarding program functions and activities.

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

6           (3)

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

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

14           3. If the Governor's appointments are not made within  
15 60 days after the ombudsman submits the list, the ombudsman,  
16 in consultation with the secretary ~~State Long-Term Care~~  
17 ~~Ombudsman Council~~, shall appoint three members, one of whom  
18 must be over 60 years of age.

19           Section 14. Subsection (4) of section 400.0069,  
20 Florida Statutes, is amended to read:

21           400.0069 Local long-term care ombudsman councils;  
22 duties; membership.--

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

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

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

17 400.0071 Complaint procedures.--

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

24 Section 16. Subsections (1) and (2) of section  
25 400.0087, Florida Statutes, are amended to read:

26 400.0087 Agency oversight.--

27 (1) The Department of Elderly Affairs shall monitor  
28 the local ombudsman councils responsible for carrying out the  
29 duties delegated by s. 400.0069 and federal law. The  
30 department, in consultation with the ombudsman ~~and the State~~  
31 ~~Long-Term Care Ombudsman Council~~, shall adopt rules to

1 establish the policies and procedures for the monitoring of  
2 local ombudsman councils.

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

13 Section 17. Section 400.0089, Florida Statutes, is  
14 amended to read:

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

1 pertaining to the number and types of complaints received by  
2 the long-term care ombudsman program.

3 Section 18. Section 400.0091, Florida Statutes, is  
4 amended to read:

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

25 Section 19. Paragraph (d) of subsection (5) of section  
26 400.179, Florida Statutes, is amended to read:

27 400.179 Sale or transfer of ownership of a nursing  
28 facility; liability for Medicaid underpayments and  
29 overpayments.--

30 (5) Because any transfer of a nursing facility may  
31 expose the fact that Medicaid may have underpaid or overpaid

1 the transferor, and because in most instances, any such  
2 underpayment or overpayment can only be determined following a  
3 formal field audit, the liabilities for any such underpayments  
4 or overpayments shall be as follows:

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

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

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

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

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

27 5. Any failure of the nursing facility operator to  
28 acquire, maintain, renew annually, or provide proof to the  
29 agency shall be grounds for the agency to deny, cancel,  
30 revoke, or suspend the facility license to operate such  
31 facility and to take any further action, including, but not

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

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

13 477.025 Cosmetology salons; specialty salons;  
14 requisites; licensure; inspection; mobile cosmetology  
15 salons.--

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

19 (11) Facilities licensed under part II or part III of  
20 chapter 400 shall be exempt from the provisions of this  
21 section and a cosmetologist licensed pursuant to s. 477.019  
22 may provide salon services exclusively for facility residents.

23 Section 21. Section 627.9408, Florida Statutes, is  
24 amended to read:

25 627.9408 Rules.--

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

29 (2) The department may adopt by rule the provisions of  
30 the Long-Term Care Insurance Model Regulation adopted by the  
31 National Association of Insurance Commissioners in the second



1 quarter of the year 2000 which are not in conflict with the  
2 Florida Insurance Code.

3           Section 22. Subsections (2) and (3) of section  
4 400.0066, Florida Statutes, are repealed.

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