

HB 1067

2006
CS

CHAMBER ACTION

1 The Elder & Long-Term Care Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the State Long-Term Care Ombudsman
7 Program; amending s. 400.0060, F.S.; providing and
8 revising definitions; amending s. 400.0061, F.S.; revising
9 legislative findings and intent; amending s. 400.0063,
10 F.S.; revising provisions relating to qualifications of
11 the State Long-Term Care Ombudsman; revising duties of the
12 legal advocate; amending s. 400.0065, F.S.; revising
13 duties and responsibilities of the State Long-Term Care
14 Ombudsman; requiring an annual report; deleting provisions
15 relating to conflict of interest; repealing s. 400.0066,
16 F.S., relating to the Office of State Long-Term Care
17 Ombudsman and departments of state government; amending s.
18 400.0067, F.S.; revising duties and membership of the
19 State Long-Term Care Ombudsman Council; providing for
20 election of a local council member from each local council
21 to provide representation on the state council;
22 authorizing the Secretary of Elderly Affairs to recommend
23 to the Governor appointments for at-large positions on the

Page 1 of 42

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1067-01-c1

HB 1067

2006
CS

24 | state council; providing conditions for removal of members
25 | of and for filling vacancies on the state council;
26 | providing for election of officers and meetings; providing
27 | for per diem and travel expenses if approved by the
28 | ombudsman; deleting provisions relating to conflicts of
29 | interest and requests for appropriations; amending s.
30 | 400.0069, F.S.; authorizing the State Long-Term Care
31 | Ombudsman to designate and direct local long-term care
32 | ombudsman councils; requiring approval by the Secretary of
33 | Elderly Affairs of jurisdictional boundaries designated by
34 | the ombudsman; revising duties of local long-term care
35 | ombudsman councils; providing requirements and application
36 | for membership, election of officers, and meetings of
37 | local long-term care ombudsman councils; providing
38 | conditions for removal of members; providing for travel
39 | expenses for members of the council; deleting provisions
40 | relating to conflicts of interest; creating s. 400.0070,
41 | F.S.; consolidating provisions relating to conflicts of
42 | interest of the ombudsman; providing rulemaking authority
43 | to the Department of Elderly Affairs regarding conflicts
44 | of interest; amending s. 400.0071, F.S.; establishing
45 | procedures for receiving, investigating, and assessing
46 | complaints against long-term care facilities; deleting
47 | provisions requiring the posting and distribution of
48 | copies of such procedures; amending s. 400.0073, F.S.;
49 | providing conditions for investigations of complaints by
50 | state and local ombudsman councils; providing that
51 | refusing to allow the ombudsman or a member of a state or

Page 2 of 42

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1067-01-c1

HB 1067

2006
CS

52 | local council to enter a long-term care facility is a
53 | violation of ch. 400, F.S., under certain circumstances;
54 | deleting conditions for onsite administrative inspections;
55 | creating s. 400.0074, F.S.; providing conditions and
56 | requirements for onsite administrative assessments of
57 | nursing homes, assisted living facilities, and adult
58 | family-care homes; prohibiting forcible entry of long-term
59 | care facilities; providing that refusing to allow the
60 | ombudsman or a member of a state or local council to enter
61 | a long-term care facility is a violation of ch. 400, F.S.,
62 | under certain circumstances; amending s. 400.0075, F.S.;
63 | providing complaint notification procedures for state and
64 | local councils; providing circumstances in which
65 | information relating to violations by a long-term care
66 | facility is provided to a local law enforcement agency;
67 | amending s. 400.0078, F.S.; requiring information relating
68 | to the State Long-Term Care Ombudsman Program to be
69 | provided to residents of long-term care facilities or
70 | their representatives; amending s. 400.0079, F.S.;
71 | providing for immunity from liability for certain persons;
72 | amending s. 400.0081, F.S.; requiring long-term care
73 | facilities to provide the Office of State Long-Term Care
74 | Ombudsman and state and local councils and their members
75 | with access to the facility and the records and residents
76 | of the facility; authorizing rather than requiring the
77 | department to adopt rules regarding access to facilities,
78 | records, and residents; amending s. 400.0083, F.S.;
79 | prohibiting certain actions against persons who file

HB 1067

2006
CS

80 | complaints; providing penalties; repealing s. 400.0085,
 81 | F.S., relating to a penalty; amending s. 400.0087, F.S.;
 82 | providing for oversight by and responsibilities of the
 83 | department; requiring the department to provide certain
 84 | funding for the State Long-Term Care Ombudsman Program;
 85 | amending s. 400.0089, F.S.; requiring the office to
 86 | maintain a data reporting system relating to complaints
 87 | about and conditions in long-term care facilities and to
 88 | residents therein; requiring the office to publish and
 89 | include certain information in its annual report; amending
 90 | s. 400.0091, F.S.; providing for training of employees of
 91 | the office and members of the state and local councils;
 92 | requiring the ombudsman to approve the curriculum and
 93 | providing contents thereof; requiring certification of
 94 | employees by the ombudsman; providing an effective date.

95 |
 96 | Be It Enacted by the Legislature of the State of Florida:

97 |
 98 | Section 1. Section 400.0060, Florida Statutes, is amended
 99 | to read:

100 | 400.0060 Definitions.--When used in this part, unless the
 101 | context clearly dictates otherwise ~~requires~~, the term:

102 | (1) "Agency" means the Agency for Health Care
 103 | Administration.

104 | (2) "Department" means the Department of Elderly Affairs.

105 | (3) "Local council" means a local long-term care ombudsman
 106 | council designated by the ombudsman pursuant to s. 400.0069.

HB 1067

2006
CS

107 | Local councils are also known as district long-term care
108 | ombudsman councils or district councils.

109 | ~~(4)~~~~(2)~~ "Long-term care facility" means a ~~skilled~~ nursing
110 | home facility, ~~nursing facility~~, assisted living facility, adult
111 | family-care home, board and care facility, or any other similar
112 | residential adult care facility ~~center~~.

113 | ~~(5)~~~~(3)~~ "Office" means the Office of State Long-Term Care
114 | Ombudsman created by s. 400.0063.

115 | ~~(6)~~~~(4)~~ "Ombudsman" means the individual appointed by the
116 | Secretary of Elderly Affairs ~~designated~~ to head the Office of
117 | State Long-Term Care Ombudsman.

118 | ~~(7)~~~~(5)~~ "Resident" means an individual 60 years of age or
119 | older who resides in a long-term care facility.

120 | ~~(8)~~~~(6)~~ "Secretary" means the Secretary of Elderly Affairs.

121 | ~~(9)~~ "State council" means the State Long-Term Care
122 | Ombudsman Council created by s. 400.0067.

123 | Section 2. Section 400.0061, Florida Statutes, is amended
124 | to read:

125 | 400.0061 Legislative findings and intent; long-term care
126 | facilities.--

127 | (1) The Legislature finds that conditions in long-term
128 | care facilities in this state are such that the rights, health,
129 | safety, and welfare of residents are not fully ensured by rules
130 | of the Department of Elderly Affairs or the Agency for Health
131 | Care Administration, or by the good faith of owners or operators
132 | of long-term care facilities. Furthermore, there is a need for a
133 | formal mechanism whereby a long-term care facility resident, a
134 | representative of a long-term care facility resident, or any

HB 1067

2006
CS

135 | other concerned citizen ~~or his or her representative~~ may make a
136 | complaint against the facility or an employee of the facility
137 | ~~its employees~~, or against other persons who are in a position to
138 | restrict, interfere with, or threaten the rights, health,
139 | safety, or welfare of a long-term care facility ~~the~~ resident.
140 | The Legislature finds that concerned citizens are often more
141 | effective advocates for ~~of~~ the rights of others than
142 | governmental agencies. The Legislature further finds that in
143 | order to be eligible to receive an allotment of funds authorized
144 | and appropriated under the federal Older Americans Act, the
145 | state must establish and operate an Office of State Long-Term
146 | Care Ombudsman, to be headed by the State Long-Term Care
147 | Ombudsman, and carry out a long-term care ombudsman program.

148 | (2) It is the intent of the Legislature, therefore, to
149 | utilize voluntary citizen ombudsman councils under the
150 | leadership of the ombudsman, and through them to operate an
151 | ombudsman program which shall, without interference by any
152 | executive agency, undertake to discover, investigate, and
153 | determine the presence of conditions or individuals which
154 | constitute a threat to the rights, health, safety, or welfare of
155 | the residents of long-term care facilities. To ensure that the
156 | effectiveness and efficiency of such investigations are not
157 | impeded by advance notice or delay, the Legislature intends that
158 | the ombudsman and ombudsman councils and their designated
159 | representatives not be required to obtain warrants in order to
160 | enter into or conduct investigations or onsite administrative
161 | assessments ~~inspections~~ of long-term care facilities. It is the
162 | further intent of the Legislature that the environment in long-

Page 6 of 42

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1067-01-c1

HB 1067

2006
CS

163 term care facilities ~~shall~~ be conducive to the dignity and
 164 independence of residents and that investigations by ombudsman
 165 councils shall further the enforcement of laws, rules, and
 166 regulations that safeguard the health, safety, and welfare of
 167 residents.

168 Section 3. Section 400.0063, Florida Statutes, is amended
 169 to read:

170 400.0063 Establishment of Office of State Long-Term Care
 171 Ombudsman; designation of ombudsman and legal advocate.--

172 (1) There is created an Office of State Long-Term Care
 173 Ombudsman in the Department of Elderly Affairs.

174 (2) (a) The Office of State Long-Term Care Ombudsman shall
 175 be headed by the State Long-Term Care Ombudsman, who shall ~~have~~
 176 ~~expertise and experience in the fields of long-term care and~~
 177 ~~advocacy, who shall~~ serve on a full-time basis and shall
 178 personally, or through representatives of the office, carry out
 179 the purposes and functions of the office ~~of State Long-Term Care~~
 180 ~~Ombudsman~~ in accordance with state and federal law.

181 (b) The ~~State Long-Term Care~~ ombudsman shall be appointed
 182 by and shall serve at the pleasure of the Secretary of Elderly
 183 Affairs. The secretary shall appoint a person who has expertise
 184 and experience in the fields of long-term care and advocacy to
 185 serve as ombudsman. ~~No person who has a conflict of interest, or~~
 186 ~~has an immediate family member who has a conflict of interest,~~
 187 ~~may be involved in the designation of the ombudsman.~~

188 (3) (a) There is created in the office ~~of State Long-Term~~
 189 ~~Care Ombudsman~~ the position of legal advocate, who shall be

HB 1067

2006
CS

190 selected by and serve at the pleasure of the ombudsman, and ~~who~~
191 shall be a member in good standing of The Florida Bar.

192 (b) The duties of the legal advocate shall include, but
193 not be limited to:

194 1. Assisting the ombudsman in carrying out the duties of
195 the office with respect to the abuse, neglect, or violation of
196 rights of residents of long-term care facilities.

197 2. Assisting the state and local ~~ombudsman~~ councils in
198 carrying out their responsibilities under this part.

199 3. Pursuing administrative, initiating and prosecuting
200 legal, and other appropriate remedies on behalf of equitable
201 ~~actions to enforce the rights of long-term care facility~~
202 ~~residents as defined in this chapter.~~

203 4. Serving as legal counsel to the state and local
204 ~~ombudsman~~ councils, or individual members thereof, against whom
205 any suit or other legal action is initiated in connection with
206 the performance of the official duties of the councils or an
207 individual member.

208 Section 4. Section 400.0065, Florida Statutes, is amended
209 to read:

210 400.0065 State Long-Term Care Ombudsman; duties and
211 responsibilities; ~~conflict of interest.~~--

212 (1) The purpose of the Office of State Long-Term Care
213 Ombudsman shall be to:

214 (a) Identify, investigate, and resolve complaints made by
215 or on behalf of residents of long-term care facilities, relating
216 to actions or omissions by providers or representatives of
217 providers of long-term care services, other public or private

HB 1067

2006
CS

218 agencies, guardians, or representative payees that may adversely
219 affect the health, safety, welfare, or rights of the residents.

220 (b) Provide services that ~~to~~ assist ~~residents~~ in
221 protecting the health, safety, welfare, and rights of ~~the~~
222 residents.

223 (c) Inform residents, their representatives, and other
224 citizens about obtaining the services of the ~~Office of~~ State
225 Long-Term Care Ombudsman Program and its representatives.

226 (d) Ensure that residents have regular and timely access
227 to the services provided through the office and that residents
228 and complainants receive timely responses from representatives
229 of the office to their complaints.

230 (e) Represent the interests of residents before
231 governmental agencies and seek administrative, legal, and other
232 remedies to protect the health, safety, welfare, and rights of
233 the residents.

234 (f) Administer the ~~Provide administrative and technical~~
235 ~~assistance to~~ state and local ~~ombudsman~~ councils.

236 (g) Analyze, comment on, and monitor the development and
237 implementation of federal, state, and local laws, rules, and
238 regulations, and other governmental policies and actions, that
239 pertain to the health, safety, welfare, and rights of the
240 residents, with respect to the adequacy of long-term care
241 facilities and services in the state, and recommend any changes
242 in such laws, rules, regulations, policies, and actions as the
243 office determines to be appropriate and necessary.

HB 1067

2006
CS

244 (h) Provide technical support for the development of
245 resident and family councils to protect the well-being and
246 rights of residents.

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

249 (a) Establish and coordinate ~~Assist and support the~~
250 ~~efforts of the State Long Term Care Ombudsman Council in the~~
251 ~~establishment and coordination of local ombudsman councils~~
252 throughout the state.

253 (b) Perform the duties specified in state and federal law,
254 rules, and regulations.

255 (c) Within the limits of appropriated federal and state
256 ~~funding authorized and appropriated~~, employ such personnel,
257 ~~including staff for local ombudsman councils~~, as are necessary
258 to perform adequately the functions of the office and provide or
259 contract for legal services to assist the state and local
260 ~~ombudsman~~ councils in the performance of their duties. Staff
261 positions established for the purpose of coordinating the
262 activities of for each local ombudsman council and assisting its
263 members may be ~~established as career service positions, and~~
264 ~~shall be~~ filled by the ombudsman after approval by the
265 secretary. Notwithstanding any other provision of this part,
266 upon certification by the ombudsman that the staff member hired
267 to fill any such position has completed the initial training
268 required under s. 400.0091, such person shall be considered a
269 representative of the State Long-Term Care Ombudsman Program for
270 purposes of this part.

HB 1067

2006
CS

271 (d) Contract for services necessary to carry out the
272 activities of the office.

273 (e) Apply for, receive, and accept grants, gifts, or other
274 payments, including, but not limited to, real property, personal
275 property, and services from a governmental entity or other
276 public or private entity or person, and make arrangements for
277 the use of such grants, gifts, or payments.

278 (f) Coordinate, to the greatest extent possible, state and
279 local ombudsman services with the protection and advocacy
280 systems for individuals with developmental disabilities and
281 mental illnesses and with legal assistance programs for the poor
282 through adoption of memoranda of understanding and other means.

283 (g) Enter into a cooperative agreement with the Statewide
284 Advocacy Council ~~and district human rights advocacy committees~~
285 for the purpose of coordinating and avoiding duplication of
286 advocacy services provided to residents ~~of long term care~~
287 ~~facilities~~.

288 (h) Enter into a cooperative agreement with the Medicaid
289 Fraud Division as prescribed under s. 731(e)(2)(B) of the Older
290 Americans Act.

291 (i) Prepare an annual report describing the activities
292 carried out by the office, the state council, and the local
293 councils in the year for which the report is prepared. The
294 ombudsman shall submit the report to the secretary at least 30
295 days before the convening of the regular session of the
296 Legislature. The secretary shall in turn submit the report to
297 the United States Assistant Secretary for Aging, the Governor,
298 the President of the Senate, the Speaker of the House of

HB 1067

2006
CS

299 Representatives, the Secretary of Children and Family Services,
300 and the Secretary of Health Care Administration. The report
301 shall, at a minimum:

302 1. Contain and analyze data collected concerning
303 complaints about and conditions in long-term care facilities and
304 the disposition of such complaints.

305 2. Evaluate the problems experienced by residents.

306 3. Analyze the successes of the ombudsman program during
307 the preceding year, including an assessment of how successfully
308 the program has carried out its responsibilities under the Older
309 Americans Act.

310 4. Provide recommendations for policy, regulatory, and
311 statutory changes designed to solve identified problems; resolve
312 residents' complaints; improve residents' lives and quality of
313 care; protect residents' rights, health, safety, and welfare;
314 and remove any barriers to the optimal operation of the State
315 Long-Term Care Ombudsman Program.

316 5. Contain recommendations from the State Long-Term Care
317 Ombudsman Council regarding program functions and activities and
318 recommendations for policy, regulatory, and statutory changes
319 designed to protect residents' rights, health, safety, and
320 welfare.

321 6. Contain any relevant recommendations from the local
322 councils regarding program functions and activities.

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

324 ~~(a) Have a direct involvement in the licensing or~~
325 ~~certification of, or an ownership or investment interest in, a~~

HB 1067

2006
CS

326 ~~long term care facility or a provider of a long term care~~
327 ~~service.~~

328 ~~(b) Be employed by, or participate in the management of, a~~
329 ~~long term care facility.~~

330 ~~(c) Receive, or have a right to receive, directly or~~
331 ~~indirectly, remuneration, in cash or in kind, under a~~
332 ~~compensation agreement with the owner or operator of a long term~~
333 ~~care facility.~~

334
335 ~~The Department of Elderly Affairs shall adopt rules to establish~~
336 ~~procedures to identify and eliminate conflicts of interest as~~
337 ~~described in this subsection.~~

338 Section 5. Section 400.0066, Florida Statutes, is
339 repealed.

340 Section 6. Section 400.0067, Florida Statutes, is amended
341 to read:

342 400.0067 State Long-Term Care Ombudsman Council; duties;
343 membership.--

344 (1) There is created within the Office of State Long-Term
345 Care Ombudsman, the State Long-Term Care Ombudsman Council.

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

347 (a) Serve as an advisory body to assist the ombudsman in
348 reaching a consensus among local ombudsman councils on issues
349 affecting residents and impacting the optimal operation of the
350 program of statewide concern.

351 (b) Serve as an appellate body in receiving from the local
352 ~~ombudsman~~ councils complaints not resolved at the local level.

353 Any individual member or members of the state ombudsman council

HB 1067

2006
CS

354 may enter any long-term care facility involved in an appeal,
355 pursuant to the conditions specified in s. 400.0074(2)
356 ~~400.0069(3)~~.

357 (c) Assist the ombudsman to discover, investigate, and
358 determine the existence of abuse or neglect in any long-term
359 care facility. ~~The Department of Elderly Affairs shall develop~~
360 ~~procedures relating to such investigations. Investigations may~~
361 ~~consist, in part, of one or more onsite administrative~~
362 ~~inspections.~~

363 (d) Assist the ombudsman in eliciting, receiving,
364 responding to, and resolving complaints made by or on behalf of
365 ~~long-term care facility residents and in developing procedures~~
366 ~~relating to the receipt and resolution of such complaints. The~~
367 ~~secretary shall approve all such procedures.~~

368 (e) Elicit and coordinate state, local, and voluntary
369 organizational assistance for the purpose of improving the care
370 received by residents ~~of a long-term care facility.~~

371 (f) Assist the ombudsman in preparing the annual report
372 described in s. 400.0065. ~~Prepare an annual report describing~~
373 ~~the activities carried out by the ombudsman and the State Long-~~
374 ~~Term Care Ombudsman Council in the year for which the report is~~
375 ~~prepared. The State Long-Term Care Ombudsman Council shall~~
376 ~~submit the report to the Secretary of Elderly Affairs. The~~
377 ~~secretary shall in turn submit the report to the Commissioner of~~
378 ~~the United States Administration on Aging, the Governor, the~~
379 ~~President of the Senate, the Speaker of the House of~~
380 ~~Representatives, the minority leaders of the House and Senate,~~
381 ~~the chairpersons of appropriate House and Senate committees, the~~

HB 1067

2006
CS

382 ~~Secretary of Children and Family Services, and the Secretary of~~
383 ~~Health Care Administration. The report shall be submitted by the~~
384 ~~Secretary of Elderly Affairs at least 30 days before the~~
385 ~~convening of the regular session of the Legislature and shall,~~
386 ~~at a minimum:~~

387 ~~1. Contain and analyze data collected concerning~~
388 ~~complaints about and conditions in long term care facilities.~~

389 ~~2. Evaluate the problems experienced by residents of long-~~
390 ~~term care facilities.~~

391 ~~3. Contain recommendations for improving the quality of~~
392 ~~life of the residents and for protecting the health, safety,~~
393 ~~welfare, and rights of the residents.~~

394 ~~4. Analyze the success of the ombudsman program during the~~
395 ~~preceding year and identify the barriers that prevent the~~
396 ~~optimal operation of the program. The report of the program's~~
397 ~~successes shall also address the relationship between the state~~
398 ~~long term care ombudsman program, the Department of Elderly~~
399 ~~Affairs, the Agency for Health Care Administration, and the~~
400 ~~Department of Children and Family Services, and an assessment of~~
401 ~~how successfully the state long term care ombudsman program has~~
402 ~~carried out its responsibilities under the Older Americans Act.~~

403 ~~5. Provide policy and regulatory and legislative~~
404 ~~recommendations to solve identified problems; resolve residents'~~
405 ~~complaints; improve the quality of care and life of the~~
406 ~~residents; protect the health, safety, welfare, and rights of~~
407 ~~the residents; and remove the barriers to the optimal operation~~
408 ~~of the state long term care ombudsman program.~~

HB 1067

2006
CS

409 ~~6. Contain recommendations from the local ombudsman~~
410 ~~councils regarding program functions and activities.~~

411 ~~7. Include a report on the activities of the legal~~
412 ~~advocate and other legal advocates acting on behalf of the local~~
413 ~~and state councils.~~

414 (3)(a) The State Long-Term Care Ombudsman Council shall be
415 composed of one active local council member elected ~~designated~~
416 by each local council plus three at-large members ~~persons~~
417 appointed by the Governor.

418 (a) Each local council shall elect by majority vote a
419 representative from among the council members to represent the
420 interests of the local council on the state council. A local
421 council chair may not serve as the representative of the local
422 council on the state council.

423 (b)1. The secretary, after consulting ~~ombudsman, in~~
424 ~~consultation~~ with the ombudsman ~~secretary~~, shall submit to the
425 Governor a list of persons recommended for appointment to the
426 at-large positions on the state council. The list shall not
427 include the name of any person who is currently at least eight
428 ~~names of persons who are not serving on a local council.~~

429 2. The Governor shall appoint three at-large members
430 chosen from the list, ~~at least one of whom must be over 60 years~~
431 ~~of age.~~

432 3. If the Governor does not appoint an at-large member to
433 fill a vacant position ~~Governor's appointments are not made~~
434 within 60 days after ~~the ombudsman submits~~ the list is
435 submitted, the secretary, after consulting with the ombudsman,
436 ~~in consultation with the secretary~~, shall appoint an at-large

HB 1067

2006
CS

437 | member to fill that vacant position ~~three members, one of whom~~
 438 | ~~must be over 60 years of age.~~

439 | (c)1. All state council members shall ~~be appointed to~~
 440 | serve 3-year terms.

441 | 2. A member of the state ~~Long Term Care Ombudsman~~ council
 442 | may not serve more than two consecutive terms.

443 | 3. A local council may recommend removal of its elected
 444 | representative from the state council by a majority vote. If the
 445 | council votes to remove its representative, the local council
 446 | chair shall immediately notify the ombudsman. The secretary
 447 | shall advise the Governor of the local council's vote upon
 448 | receiving notice from the ombudsman. Any vacancy shall be filled
 449 | in the same manner as the original appointment.

450 | 4. The position of any member missing three state council
 451 | meetings within a 1-year period ~~consecutive regular meetings~~
 452 | without cause may ~~shall~~ be declared vacant by the ombudsman. The
 453 | findings of the ombudsman regarding cause shall be final and
 454 | binding.

455 | 5. Any vacancy on the state council shall be filled in the
 456 | same manner as the original appointment.

457 | (d)1. The state ~~ombudsman~~ council shall elect a chair to
 458 | serve for a term of 1 year. A chair may not serve more than two
 459 | consecutive terms ~~chairperson for a term of 1 year from among~~
 460 | ~~the members who have served for at least 1 year.~~

461 | 2. The chair ~~chairperson~~ shall select a vice chair
 462 | ~~chairperson~~ from among the members. The vice chair ~~chairperson~~
 463 | shall preside over the state council in the absence of the chair
 464 | ~~chairperson.~~

HB 1067

2006
CS

465 3. The chair may create additional executive positions as
466 necessary to carry out the duties of the state council. Any
467 person appointed to an executive position shall serve at the
468 pleasure of the chair, and his or her term shall expire on the
469 same day as the term of the chair.

470 4. A chair may be immediately removed from office prior to
471 the expiration of his or her term by a vote of two-thirds of all
472 state council members present at any meeting at which a quorum
473 is present. If a chair is removed from office prior to the
474 expiration of his or her term, a replacement chair shall be
475 chosen during the same meeting in the same manner as described
476 in this paragraph, and the term of the replacement chair shall
477 begin immediately. The replacement chair shall serve for the
478 remainder of the term and is eligible to serve two subsequent
479 consecutive terms.

480 (e)1. The state ~~ombudsman~~ council shall meet upon the call
481 of the chair or upon the call of the ombudsman. The council
482 shall meet ~~chairperson~~, at least quarterly but may meet ~~or~~ more
483 frequently as needed.

484 2. A quorum shall be considered present if more than 50
485 percent of all active state council members are in attendance at
486 the same meeting.

487 3. Neither the state council nor any of its individual
488 members may vote on or otherwise make any binding decisions that
489 will directly impact the state council or any local council
490 outside of a publicly noticed meeting at which a quorum is
491 present.

HB 1067

2006
CS

492 (f) Members shall receive no compensation but shall, with
 493 approval from the ombudsman, be reimbursed for per diem and
 494 travel expenses as provided in s. 112.061.

495 ~~(4) No officer, employee, or representative of the Office~~
 496 ~~of State Long Term Care Ombudsman or of the State Long Term Care~~
 497 ~~Ombudsman Council, nor any member of the immediate family of~~
 498 ~~such officer, employee, or representative, may have a conflict~~
 499 ~~of interest. The ombudsman shall adopt rules to identify and~~
 500 ~~remove conflicts of interest.~~

501 ~~(5) The Department of Elderly Affairs shall make a~~
 502 ~~separate and distinct request for an appropriation for all~~
 503 ~~expenses for the state and local ombudsman councils.~~

504 Section 7. Section 400.0069, Florida Statutes, is amended
 505 to read:

506 400.0069 Local long-term care ombudsman councils; duties;
 507 membership.--

508 (1) (a) The ombudsman shall designate local long-term care
 509 ombudsman councils to carry out the duties of the State Long-
 510 Term Care Ombudsman Program within local communities. Each local
 511 council shall function under the direction of the ombudsman.

512 (b) The ombudsman shall ensure that there is ~~There shall~~
 513 ~~be~~ at least one local long-term care ombudsman council operating
 514 in each of the department's planning and service areas of the
 515 ~~Department of Elderly Affairs, which shall function under the~~
 516 ~~direction of the ombudsman and the state ombudsman council. The~~
 517 ombudsman may create additional local councils as necessary to
 518 ensure that residents throughout the state have adequate access
 519 to State Long-Term Care Ombudsman Program services. The

HB 1067

2006
CS

520 ombudsman, after approval from the secretary, shall designate
521 the jurisdictional boundaries of each local council.

522 (2) The duties of the local councils ~~ombudsman council~~ are
523 to:

524 (a) ~~To~~ Serve as a third-party mechanism for protecting the
525 health, safety, welfare, and civil and human rights of residents
526 ~~of a long term care facility.~~

527 (b) ~~To~~ Discover, investigate, and determine the existence
528 of abuse or neglect in any long-term care facility and to use
529 the procedures provided for in ss. 415.101-415.113 when
530 applicable. ~~Investigations may consist, in part, of one or more~~
531 ~~onsite administrative inspections.~~

532 (c) ~~To~~ Elicit, receive, investigate, respond to, and
533 resolve complaints made by, or on behalf of, ~~long term care~~
534 ~~facility~~ residents.

535 (d) ~~To~~ Review and, if necessary, ~~to~~ comment on, ~~for their~~
536 ~~effect on the rights of long term care facility residents,~~ all
537 existing or proposed rules, regulations, and other governmental
538 policies and actions relating to long-term care facilities that
539 may potentially have an effect on the rights, health, safety,
540 and welfare of residents.

541 (e) ~~To~~ Review personal property and money accounts of
542 ~~Medicaid~~ residents who are receiving assistance under the
543 Medicaid program pursuant to an investigation to obtain
544 information regarding a specific complaint or problem.

545 (f) Recommend that the ombudsman and the legal advocate ~~To~~
546 ~~represent the interests of residents before government agencies~~

HB 1067

2006
CS

547 ~~and to~~ seek administrative, legal, and other remedies to protect
548 the health, safety, welfare, and rights of the residents.

549 (g) ~~To~~ Carry out other activities that the ombudsman
550 determines to be appropriate.

551 (3) In order to carry out the duties specified in
552 subsection (2), a member of a ~~the local ombudsman~~ council is
553 authorized, ~~pursuant to ss. 400.19(1) and 400.434,~~ to enter any
554 long-term care facility without notice or first obtaining a
555 warrant, subject to the provisions of s. 400.0074(2)
556 ~~400.0073(5).~~

557 (4) Each local ~~ombudsman~~ council shall be composed of
558 members whose primary residence is located within the boundaries
559 of the local council's jurisdiction.

560 (a) The ombudsman shall strive to ensure that each local
561 council ~~no less than 15 members and no more than 40 members from~~
562 ~~the local planning and service area,~~ to include the following
563 persons as members:

564 1. At least one medical or osteopathic physician whose
565 practice includes or has included a substantial number of
566 geriatric patients and who may ~~have limited~~ practice in a long-
567 term care facility;

568 2. At least one registered nurse who has geriatric
569 experience, ~~if possible;~~

570 3. At least one licensed pharmacist;

571 4. At least one registered dietitian;

572 5. At least six nursing home residents or representative
573 consumer advocates for nursing home residents;

HB 1067

2006
CS

574 6. At least three residents of assisted living facilities
575 or adult family-care homes or three representative consumer
576 advocates for alternative long-term care facility residents;

577 7. At least one attorney; and

578 8. At least one professional social worker.

579 (b) In no case shall the medical director of a long-term
580 care facility or an employee of the agency ~~for Health Care~~
581 ~~Administration, the department,~~ the Department of Children and
582 Family Services, or the Agency for Persons with Disabilities
583 ~~Department of Elderly Affairs~~ serve as a member or as an ex
584 officio member of a council. ~~Each member of the council shall~~
585 ~~certify that neither the council member nor any member of the~~
586 ~~council member's immediate family has any conflict of interest~~
587 ~~pursuant to subsection (10). Local ombudsman councils are~~
588 ~~encouraged to recruit council members who are 60 years of age or~~
589 ~~older.~~

590 (5) (a) Individuals wishing to join a local council shall
591 submit an application to the ombudsman. The ombudsman shall
592 review the individual's application and advise the secretary of
593 his or her recommendation for approval or disapproval of the
594 candidate's membership on the local council. If the secretary
595 approves of the individual's membership, the individual shall be
596 appointed as a member of the local council.

597 (b) The secretary may rescind the ombudsman's approval of
598 a member on a local council at any time. If the secretary
599 rescinds the approval of a member on a local council, the
600 ombudsman shall ensure that the individual is immediately
601 removed from the local council on which he or she serves and the

HB 1067

2006
CS

602 individual may no longer represent the State Long-Term Care
603 Ombudsman Program until the secretary provides his or her
604 approval.

605 (c) A local council may recommend the removal of one or
606 more of its members by submitting to the ombudsman a resolution
607 adopted by a two-thirds vote of the members of the council
608 stating the name of the member or members recommended for
609 removal and the reasons for the recommendation. If such a
610 recommendation is adopted by a local council, the local council
611 chair or district coordinator shall immediately report the
612 council's recommendation to the ombudsman. The ombudsman shall
613 review the recommendation of the local council and advise the
614 secretary of his or her recommendation regarding removal of the
615 council member or members. All members shall be appointed to
616 serve 3 year terms. Upon expiration of a term and in case of any
617 other vacancy, the council shall select a replacement by
618 majority vote. The ombudsman shall review the selection of the
619 council and recommend approval or disapproval to the Governor.
620 If no action is taken by the Governor to approve or disapprove
621 the replacement of a member within 30 days after the ombudsman
622 has notified the Governor of his or her recommendation, the
623 replacement shall be considered disapproved and the process for
624 selection of a replacement shall be repeated.

625 (6) (a) Each ~~The local ombudsman~~ council shall elect a
626 chair for a term of 1 year. There shall be no limitation on the
627 number of terms that an approved member of a local council may
628 serve as chair ~~from members who have served at least 1 year.~~

HB 1067

2006
CS

629 (b) The chair shall select a vice chair from among the
630 members of the council. The vice chair shall preside over the
631 council in the absence of the chair.

632 (c) The chair may create additional executive positions as
633 necessary to carry out the duties of the local council. Any
634 person appointed to an executive position shall serve at the
635 pleasure of the chair, and his or her term shall expire on the
636 same day as the term of the chair.

637 (d) A chair may be immediately removed from office prior
638 to the expiration of his or her term by a vote of two-thirds of
639 the members of the local council. If any chair is removed from
640 office prior to the expiration of his or her term, a replacement
641 chair shall be elected during the same meeting, and the term of
642 the replacement chair shall begin immediately. The replacement
643 chair shall serve for the remainder of the term of the person he
644 or she replaced.

645 (7) Each ~~The local ombudsman~~ council shall meet upon the
646 call of its ~~the~~ chair or upon the call of the ombudsman. Each
647 local council shall meet, at least once a month but may meet ~~or~~
648 more frequently if necessary ~~as needed to handle emergency~~
649 ~~situations.~~

650 (8) A member of a local ~~ombudsman~~ council shall receive no
651 compensation but shall, with approval from the ombudsman, be
652 reimbursed for travel expenses both within and outside the
653 jurisdiction of the local council ~~county of residence~~ in
654 accordance with the provisions of s. 112.061.

655 (9) The local ~~ombudsman~~ councils are authorized to call
656 upon appropriate agencies of state government for such

HB 1067

2006
CS

657 professional assistance as may be needed in the discharge of
 658 their duties. All state agencies shall cooperate with the local
 659 ~~ombudsman~~ councils in providing requested information and agency
 660 representation ~~representatives~~ at council meetings.

661 ~~(10) No officer, employee, or representative of a local~~
 662 ~~long-term care ombudsman council, nor any member of the~~
 663 ~~immediate family of such officer, employee, or representative,~~
 664 ~~may have a conflict of interest. The ombudsman shall adopt rules~~
 665 ~~to identify and remove conflicts of interest.~~

666 Section 8. Section 400.0070, Florida Statutes, is created
 667 to read:

668 400.0070 Conflicts of interest.--

669 (1) The ombudsman shall not:

670 (a) Have a direct involvement in the licensing or
 671 certification of, or an ownership or investment interest in, a
 672 long-term care facility or a provider of a long-term care
 673 service.

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

676 (c) Receive, or have a right to receive, directly or
 677 indirectly, remuneration, in cash or in kind, under a
 678 compensation agreement with the owner or operator of a long-term
 679 care facility.

680 (2) Each employee of the office, each state council
 681 member, and each local council member shall certify that he or
 682 she has no conflict of interest.

683 (3) The department shall define by rule:

HB 1067

2006
CS

684 (a) Situations that constitute a person having a conflict
 685 of interest that could materially affect the objectivity or
 686 capacity of a person to serve on an ombudsman council, or as an
 687 employee of the office, while carrying out the purposes of the
 688 State Long-Term Care Ombudsman Program as specified in this
 689 part.

690 (b) The procedure by which a person listed in subsection
 691 (2) shall certify that he or she has no conflict of interest.

692 Section 9. Section 400.0071, Florida Statutes, is amended
 693 to read:

694 400.0071 State Long-Term Care Ombudsman Program complaint
 695 procedures.--

696 (1) The ~~state~~ ombudsman, in consultation with the state
 697 council, shall develop ~~recommend to the ombudsman and the~~
 698 ~~secretary~~ state and local procedures for:

699 (a) Receiving complaints against a ~~nursing home~~ or long-
 700 term care facility or ~~an its~~ employee of a long-term care
 701 facility.

702 (b) Conducting investigations of a long-term care facility
 703 or an employee or employees of such a facility subsequent to
 704 receiving a complaint.

705 (c) Conducting onsite administrative assessments of long-
 706 term care facilities. ~~The procedures shall be implemented after~~
 707 ~~the approval of the ombudsman and the secretary.~~

708 (2) The ombudsman shall implement all procedures developed
 709 under this section after receiving approval from the secretary.
 710 ~~These procedures shall be posted in full view in every nursing~~
 711 ~~home or long-term care facility. Every resident or~~

HB 1067

2006
CS

712 ~~representative of a resident shall receive, upon admission to a~~
 713 ~~nursing home or long term care facility, a printed copy of the~~
 714 ~~procedures of the state and the local ombudsman councils.~~

715 Section 10. Section 400.0073, Florida Statutes, is amended
 716 to read:

717 400.0073 State and local ombudsman council
 718 investigations.--

719 (1) A local ~~ombudsman~~ council shall investigate, within a
 720 reasonable time after a complaint is made, any complaint of a
 721 resident, a ~~or~~ representative of a resident, or any other
 722 credible source based on an action or omission by an
 723 administrator, an ~~or~~ employee, or a representative of a ~~nursing~~
 724 ~~home or~~ long-term care facility which might be:

- 725 (a) Contrary to law;i:-
- 726 (b) Unreasonable, unfair, oppressive, or unnecessarily
 727 discriminatory, even though in accordance with law;i:-
- 728 (c) Based on a mistake of fact;i:-
- 729 (d) Based on improper or irrelevant grounds;i:-
- 730 (e) Unaccompanied by an adequate statement of reasons;i:-
- 731 (f) Performed in an inefficient manner; or:-
- 732 (g) Otherwise adversely affecting the health, safety,
 733 welfare, or rights of a resident ~~erroneous~~.

734 (2) In an investigation, both the state and local
 735 ~~ombudsman~~ councils have the authority to hold public hearings.

736 (3) Subsequent to an appeal from a local ~~ombudsman~~
 737 council, the state ~~ombudsman~~ council may investigate any
 738 complaint received by the local council involving a ~~nursing home~~
 739 ~~or~~ long-term care facility or a resident.

HB 1067

2006
CS

740 (4) If the ombudsman or any state or local council member
741 is not allowed to enter a long-term care facility, the
742 administrator of the facility shall be considered to have
743 interfered with a representative of the office, the state
744 council, or the local council in the performance of official
745 duties as described in s. 400.0083(1) and to have committed a
746 violation of this part. The ombudsman shall report a facility's
747 refusal to allow entry to the agency, and the agency shall
748 record the report and take it into consideration when
749 determining actions allowable under s. 400.102, s. 400.121, s.
750 400.414, s. 400.419, s. 400.6194, or s. 400.6196. In addition to
751 ~~any specific investigation made pursuant to a complaint, the~~
752 ~~local ombudsman council shall conduct, at least annually, an~~
753 ~~investigation, which shall consist, in part, of an onsite~~
754 ~~administrative inspection, of each nursing home or long term~~
755 ~~care facility within its jurisdiction. This inspection shall~~
756 ~~focus on the rights, health, safety, and welfare of the~~
757 ~~residents.~~

758 ~~(5) Any onsite administrative inspection conducted by an~~
759 ~~ombudsman council shall be subject to the following:~~

760 ~~(a) All inspections shall be at times and for durations~~
761 ~~necessary to produce the information required to carry out the~~
762 ~~duties of the council.~~

763 ~~(b) No advance notice of an inspection shall be provided~~
764 ~~to any nursing home or long-term care facility, except that~~
765 ~~notice of followup inspections on specific problems may be~~
766 ~~provided.~~

HB 1067

2006
CS

767 ~~(c) Inspections shall be conducted in a manner which will~~
768 ~~impose no unreasonable burden on nursing homes or long term care~~
769 ~~facilities, consistent with the underlying purposes of this~~
770 ~~part. Unnecessary duplication of efforts among council members~~
771 ~~or the councils shall be reduced to the extent possible.~~

772 ~~(d) Any ombudsman council member physically present for~~
773 ~~the inspection shall identify himself or herself and the~~
774 ~~statutory authority for his or her inspection of the facility.~~

775 ~~(e) Inspections may not unreasonably interfere with the~~
776 ~~programs and activities of clients within the facility.~~
777 ~~Ombudsman council members shall respect the rights of residents.~~

778 ~~(f) All inspections shall be limited to compliance with~~
779 ~~parts II, III, and VII of this chapter and 42 U.S.C. ss. 1396(a)~~
780 ~~et seq., and any rules or regulations promulgated pursuant to~~
781 ~~such laws.~~

782 ~~(g) No ombudsman council member shall enter a single~~
783 ~~family residential unit within a long term care facility without~~
784 ~~the permission of the resident or the representative of the~~
785 ~~resident.~~

786 ~~(h) Any inspection resulting from a specific complaint~~
787 ~~made to an ombudsman council concerning a facility shall be~~
788 ~~conducted within a reasonable time after the complaint is made.~~

789 ~~(6) An inspection may not be accomplished by forcible~~
790 ~~entry. Refusal of a long term care facility to allow entry of~~
791 ~~any ombudsman council member constitutes a violation of part II,~~
792 ~~part III, or part VII of this chapter.~~

793 Section 11. Section 400.0074, Florida Statutes, is created
794 to read:

HB 1067

2006
CS

795 400.0074 Local ombudsman council onsite administrative
796 assessments.--

797 (1) In addition to any specific investigation conducted
798 pursuant to a complaint, the local council shall conduct, at
799 least annually, an onsite administrative assessment of each
800 nursing home, assisted living facility, and adult family-care
801 home within its jurisdiction. This administrative assessment
802 shall focus on factors affecting the rights, health, safety, and
803 welfare of the residents. Each local council is encouraged to
804 conduct a similar onsite administrative assessment of each
805 additional long-term care facility within its jurisdiction.

806 (2) An onsite administrative assessment conducted by a
807 local council shall be subject to the following conditions:

808 (a) To the extent possible and reasonable, the
809 administrative assessments shall not duplicate the efforts of
810 the agency surveys and inspections conducted under parts II,
811 III, and VII of this chapter.

812 (b) An administrative assessment shall be conducted at a
813 time and for a duration necessary to produce the information
814 required to carry out the duties of the local council.

815 (c) Advance notice of an administrative assessment may not
816 be provided to a long-term care facility, except that notice of
817 followup assessments on specific problems may be provided.

818 (d) A local council member physically present for the
819 administrative assessment shall identify himself or herself and
820 cite the specific statutory authority for his or her assessment
821 of the facility.

HB 1067

2006
CS

822 (e) An administrative assessment may not unreasonably
823 interfere with the programs and activities of residents.

824 (f) A local council member may not enter a single-family
825 residential unit within a long-term care facility during an
826 administrative assessment without the permission of the resident
827 or the representative of the resident.

828 (3) Regardless of jurisdiction, the ombudsman may
829 authorize a state or local council member to assist another
830 local council to perform the administrative assessments
831 described in this section.

832 (4) An onsite administrative assessment may not be
833 accomplished by forcible entry. However, if the ombudsman or a
834 state or local council member is not allowed to enter a long-
835 term care facility, the administrator of the facility shall be
836 considered to have interfered with a representative of the
837 office, the state council, or the local council in the
838 performance of official duties as described in s. 400.0083(1)
839 and to have committed a violation of this part. The ombudsman
840 shall report the refusal by a facility to allow entry to the
841 agency, and the agency shall record the report and take it into
842 consideration when determining actions allowable under s.
843 400.102, s. 400.121, s. 400.414, s. 400.419, s. 400.6194, or s.
844 400.6196.

845 Section 12. Section 400.0075, Florida Statutes, is amended
846 to read:

847 400.0075 Complaint notification and resolution
848 procedures.--

HB 1067

2006
CS

849 (1) (a) Any complaint ~~or, including any~~ problem verified
 850 ~~identified~~ by an ombudsman council as a result of an
 851 investigation or onsite administrative assessment, which
 852 complaint or problem is determined to require, deemed valid and
 853 ~~requiring~~ remedial action by the local ~~ombudsman~~ council, shall
 854 be identified and brought to the attention of the long-term care
 855 facility administrator in writing. Upon receipt of such
 856 document, the administrator, ~~in concurrence~~ with the concurrence
 857 of the local ~~ombudsman~~ council chair, shall establish target
 858 dates for taking appropriate remedial action. If, by the target
 859 date, the remedial action is not completed or forthcoming, the
 860 local ~~ombudsman~~ council chair may, after obtaining approval from
 861 the ombudsman and a majority of the members of the local
 862 council:

863 1.(a) Extend the target date if the chair ~~council~~ has
 864 reason to believe such action would facilitate the resolution of
 865 the complaint.

866 2.(b) In accordance with s. 400.0077, publicize the
 867 complaint, the recommendations of the council, and the response
 868 of the long-term care facility.

869 3.(e) Refer the complaint to the state ~~ombudsman~~ council.

870 (b) If the local council chair believes that the health,
 871 safety, welfare, or rights of the resident are in imminent
 872 danger, the chair shall notify the ombudsman or legal advocate,
 873 who, after verifying that such imminent danger exists, shall
 874 ~~local long term care ombudsman council may~~ seek immediate legal
 875 or administrative remedies to protect the resident.

HB 1067

2006
CS

876 (c) If the ombudsman has reason to believe that the long-
877 term care facility or an employee of the facility has committed
878 a criminal act, the ombudsman shall provide the local law
879 enforcement agency with the relevant information to initiate an
880 investigation of the case.

881 (2) (a) Upon referral from a ~~the local ombudsman~~ council,
882 the state ombudsman council shall assume the responsibility for
883 the disposition of the complaint. If a long-term care facility
884 fails to take action on a complaint found valid by the state
885 ombudsman council, the state council may, after obtaining
886 approval from the ombudsman and a majority of the state council
887 members:

888 1.(a) In accordance with s. 400.0077, publicize the
889 complaint, the recommendations of the local or state council,
890 and the response of the long-term care facility.

891 2.(b) Recommend to the department and the agency a series
892 of facility reviews pursuant to s. 400.19(4), s. 400.434, or s.
893 400.619 to ensure assure correction and nonrecurrence of
894 conditions that give rise to complaints against a long-term care
895 facility.

896 ~~(c) Recommend to the agency changes in rules for~~
897 ~~inspecting and licensing or certifying long-term care~~
898 ~~facilities, and recommend to the Agency for Health Care~~
899 ~~Administration changes in rules for licensing and regulating~~
900 ~~long-term care facilities.~~

901 ~~(d) Refer the complaint to the state attorney for~~
902 ~~prosecution if there is reason to believe the long-term care~~
903 ~~facility or its employee is guilty of a criminal act.~~

HB 1067

2006
CS

904 ~~3.(e)~~ Recommend to the department and the agency for
 905 ~~Health Care Administration~~ that the long-term care facility no
 906 longer receive payments under any the state Medical assistance
 907 program, including (Medicaid).

908 ~~4.(f)~~ Recommend to that the department and the agency that
 909 ~~initiate~~ procedures be initiated for revocation of the long-term
 910 care facility's license in accordance with chapter 120.

911 ~~(g) Seek legal, administrative, or other remedies to~~
 912 ~~protect the health, safety, welfare, or rights of the resident.~~

913 (b) If the state council chair believes that the health,
 914 safety, welfare, or rights of the resident are in imminent
 915 danger, the chair shall notify the ombudsman or legal advocate,
 916 who, after verifying that such imminent danger exists, State
 917 ~~Long Term Care Ombudsman Council~~ shall seek immediate legal or
 918 administrative remedies to protect the resident.

919 (c) If the ombudsman has reason to believe that the long-
 920 term care facility or an employee of the facility has committed
 921 a criminal act, the ombudsman shall provide local law
 922 enforcement with the relevant information to initiate an
 923 investigation of the case.

924 ~~(3) The state ombudsman council shall provide, as part of~~
 925 ~~its annual report required pursuant to s. 400.0067(2)(f),~~
 926 ~~information relating to the disposition of all complaints to the~~
 927 ~~Department of Elderly Affairs.~~

928 Section 13. Section 400.0078, Florida Statutes, is amended
 929 to read:

930 400.0078 Citizen access to State Long-Term Care Ombudsman
 931 Program services ~~Statewide toll-free telephone number.--~~

HB 1067

2006
CS

932 (1) The office of State Long-Term Care Ombudsman shall
 933 establish a statewide toll-free telephone number for receiving
 934 complaints concerning matters adversely affecting the health,
 935 safety, welfare, or rights of residents nursing facilities.

936 (2) Every resident or representative of a resident shall
 937 receive, upon admission to a long-term care facility,
 938 information regarding the purpose of the State Long-Term Care
 939 Ombudsman Program, the statewide toll-free telephone number for
 940 receiving complaints, and other relevant information regarding
 941 how to contact the program. Residents or their representatives
 942 must be furnished additional copies of this information upon
 943 request.

944 Section 14. Section 400.0079, Florida Statutes, is amended
 945 to read:

946 400.0079 Immunity.--

947 (1) Any person making a complaint pursuant to this part
 948 ~~act~~ who does so in good faith shall be immune from any
 949 liability, civil or criminal, that otherwise might be incurred
 950 or imposed as a direct or indirect result of making the
 951 complaint.

952 (2) The ombudsman or any person authorized by the
 953 ombudsman to act ~~acting~~ on behalf of the office, as well as all
 954 members of State Long-Term Care Ombudsman ~~or the state~~ and ~~or a~~
 955 local councils, long-term care ombudsman council shall be immune
 956 from any liability, civil or criminal, that otherwise might be
 957 incurred or imposed, during the good faith performance of
 958 official duties.

HB 1067

2006
CS

959 Section 15. Section 400.0081, Florida Statutes, is amended
960 to read:

961 400.0081 Access to facilities, residents, and records.--

962 (1) A long-term care facility shall provide the office of
963 ~~State Long Term Care Ombudsman~~, the state ~~Long Term Care~~
964 ~~Ombudsman~~ council and its members, and the local councils and
965 their members ~~long term care ombudsman councils, or their~~
966 ~~representatives~~, shall have access to:

967 (a) Any portion of the long-term care facility and any
968 resident as necessary to investigate or resolve a complaint
969 ~~facilities and residents.~~

970 (b) Medical and social records of a resident for review as
971 necessary to investigate or resolve a complaint, if:

972 1. The office has the permission of the resident or the
973 legal representative of the resident; or

974 2. The resident is unable to consent to the review and has
975 no legal representative.

976 (c) Medical and social records of the resident as
977 necessary to investigate or resolve a complaint, if:

978 1. A legal representative ~~guardian~~ of the resident refuses
979 to give permission;~~-~~

980 2. The office has reasonable cause to believe that the
981 representative ~~guardian~~ is not acting in the best interests of
982 the resident; and-

983 3. The state or local council member ~~representative~~
984 obtains the approval of the ombudsman.

985 (d) The administrative records, policies, and documents to
986 which ~~the residents,~~ or the general public~~,~~ have access.

HB 1067

2006
CS

987 (e) Upon request, copies of all licensing and
 988 certification records maintained by the state with respect to a
 989 long-term care facility.

990 ~~(2) Notwithstanding paragraph (1)(b), if, pursuant to a~~
 991 ~~complaint investigation by the state ombudsman council or a~~
 992 ~~local ombudsman council, the legal representative of the~~
 993 ~~resident refuses to give permission for the release of the~~
 994 ~~resident's records, and if the Office of State Long Term Care~~
 995 ~~Ombudsman has reasonable cause to find that the legal~~
 996 ~~representative is not acting in the best interests of the~~
 997 ~~resident, the medical and social records of the resident must be~~
 998 ~~made available to the state or local council as is necessary for~~
 999 ~~the members of the council to investigate the complaint.~~

1000 ~~(2)(3)~~ The department of ~~Elderly Affairs~~, in consultation
 1001 with the ombudsman and the state Long Term Care Ombudsman
 1002 council, may ~~shall~~ adopt rules to establish procedures to ensure
 1003 access to facilities, residents, and records as described in
 1004 this section.

1005 Section 16. Section 400.0083, Florida Statutes, is amended
 1006 to read:

1007 400.0083 Interference; retaliation; penalties.--

1008 (1) It shall be unlawful for any person, long-term care
 1009 facility, or other entity to willfully interfere with a
 1010 representative of the office ~~of State Long Term Care Ombudsman~~,
 1011 the state ~~Long Term Care Ombudsman~~ council, or a local ~~long-term~~
 1012 ~~care ombudsman~~ council in the performance of official duties.

1013 (2) It shall be unlawful for any person, long-term care
 1014 facility, or other entity to knowingly or willfully take action

HB 1067

2006
CS

1015 or retaliate against any resident, employee, or other person for
 1016 filing a complaint with, providing information to, or otherwise
 1017 cooperating with any representative of the office ~~of State Long-~~
 1018 ~~Term Care Ombudsman~~, the state ~~Long-Term Care Ombudsman~~ council,
 1019 or a local ~~long term care ombudsman~~ council.

1020 (3) ~~(a)~~ Any person, long-term care facility, or other
 1021 entity that ~~who~~ violates this section:

1022 (a) Shall be liable for damages and equitable relief as
 1023 determined by law.

1024 (b) ~~Any person, long term care facility, or other entity~~
 1025 ~~who violates this section~~ Commits a misdemeanor of the second
 1026 degree, punishable as provided in s. 775.083.

1027 Section 17. Section 400.0085, Florida Statutes, is
 1028 repealed.

1029 Section 18. Section 400.0087, Florida Statutes, is amended
 1030 to read:

1031 400.0087 Department Agency oversight; funding.--

1032 (1) The department shall meet the costs associated with
 1033 the State Long-Term Care Ombudsman Program from funds
 1034 appropriated to it.

1035 (a) The department shall include the costs associated with
 1036 support of the State Long-Term Care Ombudsman Program when
 1037 developing its budget requests for consideration by the Governor
 1038 and submittal to the Legislature.

1039 (b) The department may divert from the federal ombudsman
 1040 appropriation an amount equal to the department's administrative
 1041 cost ratio to cover the costs associated with administering the

HB 1067

2006
CS

1042 program. The remaining allotment from the Older Americans Act
1043 program shall be expended on direct ombudsman activities.

1044 (2)(1) ~~The department of Elderly Affairs shall monitor the~~
1045 ~~office, the state council, and the local ombudsman councils to~~
1046 ~~ensure that each is responsible for carrying out the duties~~
1047 ~~delegated to it by state by s. 400.0069 and federal law. The~~
1048 ~~department, in consultation with the ombudsman, shall adopt~~
1049 ~~rules to establish the policies and procedures for the~~
1050 ~~monitoring of local ombudsman councils.~~

1051 (3)(2) The department is responsible for ensuring that the
1052 office:

1053 (a) Has the objectivity and independence required to
1054 qualify it for funding under the federal Older Americans Act.

1055 (b) of State Long Term Care Ombudsman Provides information
1056 to public and private agencies, legislators, and others.

1057 (c) Provides appropriate training to representatives of
1058 the office or of the state or local long term care ombudsman
1059 councils.

1060 (d) Coordinates ombudsman services with the Advocacy
1061 Center for Persons with Disabilities and with providers of legal
1062 services to residents of long-term care facilities in compliance
1063 with state and federal laws.

1064 (4)(3) ~~The department of Elderly Affairs is the designated~~
1065 ~~state unit on aging for purposes of complying with the federal~~
1066 ~~Older Americans Act. The Department of Elderly Affairs shall~~
1067 ~~ensure that the ombudsman program has the objectivity and~~
1068 ~~independence required to qualify it for funding under the~~
1069 ~~federal Older Americans Act, and shall carry out the long term~~

HB 1067

2006
CS

1070 ~~care ombudsman program through the Office of State Long-Term~~
1071 ~~Care Ombudsman. The Department of Elderly Affairs shall also:~~

1072 (a) Receive and disburse state and federal funds for
1073 purposes that the ~~state ombudsman council~~ has formulated in
1074 accordance with the Older Americans Act.

1075 (b) Whenever necessary, act as liaison between agencies
1076 and branches of the federal and state governments and the State
1077 Long-Term Care Ombudsman Program representatives, ~~the staffs of~~
1078 ~~the state and local ombudsman councils, and members of the state~~
1079 ~~and local ombudsman councils.~~

1080 Section 19. Section 400.0089, Florida Statutes, is amended
1081 to read:

1082 400.0089 Complaint data Agency reports.--The office
1083 ~~Department of Elderly Affairs~~ shall maintain a statewide uniform
1084 reporting system to collect and analyze data relating to
1085 complaints and conditions in long-term care facilities and to
1086 residents, for the purpose of identifying and resolving
1087 significant problems. ~~The department and the State Long-Term~~
1088 ~~Care Ombudsman Council shall submit such data as part of its~~
1089 ~~annual report required pursuant to s. 400.0067(2)(f) to the~~
1090 ~~Agency for Health Care Administration, the Department of~~
1091 ~~Children and Family Services, the Florida Statewide Advocacy~~
1092 ~~Council, the Advocacy Center for Persons with Disabilities, the~~
1093 ~~Commissioner for the United States Administration on Aging, the~~
1094 ~~National Ombudsman Resource Center, and any other state or~~
1095 ~~federal entities that the ombudsman determines appropriate. The~~
1096 office State Long-Term Care Ombudsman Council shall publish
1097 quarterly and make readily available information pertaining to

Page 40 of 42

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1067-01-c1

HB 1067

2006
CS

1098 | the number and types of complaints received by the State Long-
 1099 | Term Care Ombudsman Program and shall include such information
 1100 | in the annual report required under s. 400.0065.

1101 | Section 20. Section 400.0091, Florida Statutes, is amended
 1102 | to read:

1103 | 400.0091 Training.--The ombudsman shall ensure that
 1104 | ~~provide~~ appropriate training is provided to all employees of the
 1105 | ~~office of State Long Term Care Ombudsman~~ and to the members of
 1106 | the state and local long term care ombudsman councils, including
 1107 | ~~all unpaid volunteers.~~

1108 | (1) All state and local council members ~~volunteers~~ and
 1109 | ~~appropriate~~ employees of the office shall ~~of State Long Term~~
 1110 | ~~Care Ombudsman must~~ be given a minimum of 20 hours of training
 1111 | upon employment with the office or approval ~~enrollment~~ as a
 1112 | state or local council member ~~volunteer~~ and 10 hours of
 1113 | continuing education annually thereafter.

1114 | (2) The ombudsman shall approve the curriculum for the
 1115 | initial and continuing education training, which ~~must cover~~, at
 1116 | a minimum, address:

- 1117 | (a) Resident confidentiality.
- 1118 | (b) Guardianships and powers of attorney.~~7~~
- 1119 | (c) Medication administration.~~7~~
- 1120 | (d) Care and medication of residents with dementia and
 1121 | Alzheimer's disease.~~7~~
- 1122 | (e) Accounting for residents' funds.~~7~~
- 1123 | (f) Discharge rights and responsibilities.~~7~~ ~~and~~
- 1124 | (g) Cultural sensitivity.
- 1125 | (h) Any other topic recommended by the secretary.

HB 1067

2006
CS

1126 (3) No employee, officer, or representative of the office
1127 or of the state or local ~~long term care ombudsman~~ councils,
1128 other than the ombudsman, may hold himself or herself out as a
1129 representative of the State Long-Term Care Ombudsman Program or
1130 conduct ~~carry out~~ any authorized program ~~ombudsman~~ duty
1131 described in this part ~~or responsibility~~ unless the person has
1132 received the training required by this section and has been
1133 certified ~~approved~~ by the ombudsman as qualified to carry out
1134 ombudsman activities on behalf of the office or the state or
1135 local ~~long term care ombudsman~~ councils.

1136 Section 21. This act shall take effect upon becoming a
1137 law.