

## CHAMBER ACTION

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1 The Governmental Operations 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

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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.; requiring the  
45 | department to adopt rules relating to procedures for  
46 | receiving, investigating, and assessing complaints against  
47 | long-term care facilities; deleting provisions requiring  
48 | certain approval by the Secretary of Elderly Affairs and  
49 | the ombudsman and the posting and distribution of copies  
50 | of such procedures; amending s. 400.0073, F.S.; providing  
51 | conditions for investigations of complaints by state and

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

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

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80 and residents; amending s. 400.0083, F.S.; prohibiting  
 81 certain actions against persons who file complaints;  
 82 providing penalties; repealing s. 400.0085, F.S., relating  
 83 to a penalty; amending s. 400.0087, F.S.; providing for  
 84 oversight by and responsibilities of the department;  
 85 requiring the department to provide certain funding for  
 86 the State Long-Term Care Ombudsman Program; amending s.  
 87 400.0089, F.S.; requiring the office to maintain a data  
 88 reporting system relating to complaints about and  
 89 conditions in long-term care facilities and to residents  
 90 therein; requiring the office to publish and include  
 91 certain information in its annual report; amending s.  
 92 400.0091, F.S.; providing for training of employees of the  
 93 office and members of the state and local councils;  
 94 requiring the ombudsman to approve the curriculum and  
 95 providing contents thereof; requiring certification of  
 96 employees by the ombudsman; providing an effective date.

97  
 98 Be It Enacted by the Legislature of the State of Florida:

99  
 100 Section 1. Section 400.0060, Florida Statutes, is amended  
 101 to read:

102 400.0060 Definitions.--When used in this part, unless the  
 103 context clearly dictates otherwise ~~requires~~, the term:

104 (1) "Administrative assessment" means a review of  
 105 conditions in a long-term care facility that impact the rights,  
 106 health, safety, and welfare of residents with the purpose of

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107 noting needed improvement and making recommendations to enhance  
108 the quality of life for residents.

109 (2) "Agency" means the Agency for Health Care  
110 Administration.

111 (3) "Department" means the Department of Elderly Affairs.

112 (4) "Local council" means a local long-term care ombudsman  
113 council designated by the ombudsman pursuant to s. 400.0069.  
114 Local councils are also known as district long-term care  
115 ombudsman councils or district councils.

116 (5)-~~(2)~~ "Long-term care facility" means a ~~skilled~~ nursing  
117 home facility, ~~nursing facility~~, assisted living facility, adult  
118 family-care home, board and care facility, or any other similar  
119 residential adult care facility center.

120 (6)-~~(3)~~ "Office" means the Office of State Long-Term Care  
121 Ombudsman created by s. 400.0063.

122 (7)-~~(4)~~ "Ombudsman" means the individual appointed by the  
123 Secretary of Elderly Affairs designated to head the Office of  
124 State Long-Term Care Ombudsman.

125 (8)-~~(5)~~ "Resident" means an individual 60 years of age or  
126 older who resides in a long-term care facility.

127 (9)-~~(6)~~ "Secretary" means the Secretary of Elderly Affairs.

128 (10) "State council" means the State Long-Term Care  
129 Ombudsman Council created by s. 400.0067.

130 Section 2. Section 400.0061, Florida Statutes, is amended  
131 to read:

132 400.0061 Legislative findings and intent; long-term care  
133 facilities.--

134 (1) The Legislature finds that conditions in long-term  
 135 care facilities in this state are such that the rights, health,  
 136 safety, and welfare of residents are not fully ensured by rules  
 137 of the Department of Elderly Affairs or the Agency for Health  
 138 Care Administration, or by the good faith of owners or operators  
 139 of long-term care facilities. Furthermore, there is a need for a  
 140 formal mechanism whereby a long-term care facility resident, a  
 141 representative of a long-term care facility resident, or any  
 142 other concerned citizen ~~or his or her representative~~ may make a  
 143 complaint against the facility or its employees, or against  
 144 other persons who are in a position to restrict, interfere with,  
 145 or threaten the rights, health, safety, or welfare of a long-  
 146 term care facility ~~the~~ resident. The Legislature finds that  
 147 concerned citizens are often more effective advocates for ~~of~~ the  
 148 rights of others than governmental agencies. The Legislature  
 149 further finds that in order to be eligible to receive an  
 150 allotment of funds authorized and appropriated under the federal  
 151 Older Americans Act, the state must establish and operate an  
 152 Office of State Long-Term Care Ombudsman, to be headed by the  
 153 State Long-Term Care Ombudsman, and carry out a long-term care  
 154 ombudsman program.

155 (2) It is the intent of the Legislature, therefore, to  
 156 utilize voluntary citizen ombudsman councils under the  
 157 leadership of the ombudsman, and through them to operate an  
 158 ombudsman program which shall, without interference by any  
 159 executive agency, undertake to discover, investigate, and  
 160 determine the presence of conditions or individuals which  
 161 constitute a threat to the rights, health, safety, or welfare of

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162 the residents of long-term care facilities. To ensure that the  
 163 effectiveness and efficiency of such investigations are not  
 164 impeded by advance notice or delay, the Legislature intends that  
 165 the ombudsman and ombudsman councils and their designated  
 166 representatives not be required to obtain warrants in order to  
 167 enter into or conduct investigations or onsite administrative  
 168 assessments ~~inspections~~ of long-term care facilities. It is the  
 169 further intent of the Legislature that the environment in long-  
 170 term care facilities ~~shall~~ be conducive to the dignity and  
 171 independence of residents and that investigations by ombudsman  
 172 councils shall further the enforcement of laws, rules, and  
 173 regulations that safeguard the health, safety, and welfare of  
 174 residents.

175 Section 3. Section 400.0063, Florida Statutes, is amended  
 176 to read:

177 400.0063 Establishment of Office of State Long-Term Care  
 178 Ombudsman; designation of ombudsman and legal advocate.--

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

181 (2) (a) The Office of State Long-Term Care Ombudsman shall  
 182 be headed by the State Long-Term Care Ombudsman, who shall have  
 183 ~~expertise and experience in the fields of long-term care and~~  
 184 ~~advocacy, who shall~~ serve on a full-time basis and shall  
 185 personally, or through representatives of the office, carry out  
 186 the purposes and functions of the office ~~of State Long-Term Care~~  
 187 ~~Ombudsman~~ in accordance with state and federal law.

188 (b) The ~~State Long-Term Care~~ ombudsman shall be appointed  
 189 by and shall serve at the pleasure of the Secretary of Elderly

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190 Affairs. The secretary shall appoint a person who has expertise  
191 and experience in the fields of long-term care and advocacy to  
192 serve as ombudsman. ~~No person who has a conflict of interest, or~~  
193 ~~has an immediate family member who has a conflict of interest,~~  
194 ~~may be involved in the designation of the ombudsman.~~

195 (3) (a) There is created in the office ~~of State Long-Term~~  
196 ~~Care Ombudsman~~ the position of legal advocate, who shall be  
197 selected by and serve at the pleasure of the ombudsman, ~~and who~~  
198 shall be a member in good standing of The Florida Bar.

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

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

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

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

210 4. Serving as legal counsel to the state and local  
211 ~~ombudsman~~ councils, or individual members thereof, against whom  
212 any suit or other legal action is initiated in connection with  
213 the performance of the official duties of the councils or an  
214 individual member.

215 Section 4. Section 400.0065, Florida Statutes, is amended  
216 to read:



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217 400.0065 State Long-Term Care Ombudsman; duties and  
218 responsibilities; ~~conflict of interest.~~--

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

221 (a) Identify, investigate, and resolve complaints made by  
222 or on behalf of residents of long-term care facilities, relating  
223 to actions or omissions by providers or representatives of  
224 providers of long-term care services, other public or private  
225 agencies, guardians, or representative payees that may adversely  
226 affect the health, safety, welfare, or rights of the residents.

227 (b) Provide services that ~~to~~ assist ~~residents~~ in  
228 protecting the health, safety, welfare, and rights of ~~the~~  
229 residents.

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

233 (d) Ensure that residents have regular and timely access  
234 to the services provided through the office and that residents  
235 and complainants receive timely responses from representatives  
236 of the office to their complaints.

237 (e) Represent the interests of residents before  
238 governmental agencies and seek administrative, legal, and other  
239 remedies to protect the health, safety, welfare, and rights of  
240 the residents.

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

243 (g) Analyze, comment on, and monitor the development and  
244 implementation of federal, state, and local laws, rules, and

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245 regulations, and other governmental policies and actions, that  
 246 pertain to the health, safety, welfare, and rights of the  
 247 residents, with respect to the adequacy of long-term care  
 248 facilities and services in the state, and recommend any changes  
 249 in such laws, rules, regulations, policies, and actions as the  
 250 office determines to be appropriate and necessary.

251 (h) Provide technical support for the development of  
 252 resident and family councils to protect the well-being and  
 253 rights of residents.

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

256 (a) Establish and coordinate ~~Assist and support the~~  
 257 ~~efforts of the State Long Term Care Ombudsman Council in the~~  
 258 ~~establishment and coordination of local ombudsman~~ councils  
 259 throughout the state.

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

262 (c) Within the limits of appropriated federal and state  
 263 funding ~~authorized and appropriated~~, employ such personnel,  
 264 ~~including staff for local ombudsman councils~~, as are necessary  
 265 to perform adequately the functions of the office and provide or  
 266 contract for legal services to assist the state and local  
 267 ~~ombudsman~~ councils in the performance of their duties. Staff  
 268 positions established for the purpose of coordinating the  
 269 activities of ~~for~~ each local ~~ombudsman~~ council and assisting its  
 270 members may be ~~established as career service positions~~, and  
 271 ~~shall be filled~~ by the ombudsman after approval by the  
 272 secretary. Notwithstanding any other provision of this part,

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273 upon certification by the ombudsman that the staff member hired  
274 to fill any such position has completed the initial training  
275 required under s. 400.0091, such person shall be considered a  
276 representative of the State Long-Term Care Ombudsman Program for  
277 purposes of this part.

278 (d) Contract for services necessary to carry out the  
279 activities of the office.

280 (e) Apply for, receive, and accept grants, gifts, or other  
281 payments, including, but not limited to, real property, personal  
282 property, and services from a governmental entity or other  
283 public or private entity or person, and make arrangements for  
284 the use of such grants, gifts, or payments.

285 (f) Coordinate, to the greatest extent possible, state and  
286 local ombudsman services with the protection and advocacy  
287 systems for individuals with developmental disabilities and  
288 mental illnesses and with legal assistance programs for the poor  
289 through adoption of memoranda of understanding and other means.

290 (g) Enter into a cooperative agreement with the Statewide  
291 Advocacy Council ~~and district human rights advocacy committees~~  
292 for the purpose of coordinating and avoiding duplication of  
293 advocacy services provided to residents ~~of long-term-care~~  
294 ~~facilities.~~

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

298 (i) Prepare an annual report describing the activities  
299 carried out by the office, the state council, and the local  
300 councils in the year for which the report is prepared. The

301 ombudsman shall submit the report to the secretary at least 30  
 302 days before the convening of the regular session of the  
 303 Legislature. The secretary shall in turn submit the report to  
 304 the United States Assistant Secretary for Aging, the Governor,  
 305 the President of the Senate, the Speaker of the House of  
 306 Representatives, the Secretary of Children and Family Services,  
 307 and the Secretary of Health Care Administration. The report  
 308 shall, at a minimum:

309 1. Contain and analyze data collected concerning  
 310 complaints about and conditions in long-term care facilities and  
 311 the disposition of such complaints.

312 2. Evaluate the problems experienced by residents.

313 3. Analyze the successes of the ombudsman program during  
 314 the preceding year, including an assessment of how successfully  
 315 the program has carried out its responsibilities under the Older  
 316 Americans Act.

317 4. Provide recommendations for policy, regulatory, and  
 318 statutory changes designed to solve identified problems; resolve  
 319 residents' complaints; improve residents' lives and quality of  
 320 care; protect residents' rights, health, safety, and welfare;  
 321 and remove any barriers to the optimal operation of the State  
 322 Long-Term Care Ombudsman Program.

323 5. Contain recommendations from the State Long-Term Care  
 324 Ombudsman Council regarding program functions and activities and  
 325 recommendations for policy, regulatory, and statutory changes  
 326 designed to protect residents' rights, health, safety, and  
 327 welfare.

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328        6. Contain any relevant recommendations from the local  
329 councils regarding program functions and activities.

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

331        ~~(a) Have a direct involvement in the licensing or~~  
332 ~~certification of, or an ownership or investment interest in, a~~  
333 ~~long-term care facility or a provider of a long-term care~~  
334 ~~service.~~

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

337        ~~(c) Receive, or have a right to receive, directly or~~  
338 ~~indirectly, remuneration, in cash or in kind, under a~~  
339 ~~compensation agreement with the owner or operator of a long-term~~  
340 ~~care facility.~~

341

342 ~~The Department of Elderly Affairs shall adopt rules to establish~~  
343 ~~procedures to identify and eliminate conflicts of interest as~~  
344 ~~described in this subsection.~~

345        Section 5. Section 400.0066, Florida Statutes, is  
346 repealed.

347        Section 6. Section 400.0067, Florida Statutes, is amended  
348 to read:

349        400.0067 State Long-Term Care Ombudsman Council; duties;  
350 membership.--

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

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

354        (a) Serve as an advisory body to assist the ombudsman in  
355 reaching a consensus among local ombudsman councils on issues

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356 affecting residents and impacting the optimal operation of the  
357 program of statewide concern.

358 (b) Serve as an appellate body in receiving from the local  
359 ~~ombudsman~~ councils complaints not resolved at the local level.  
360 Any individual member or members of the state ombudsman council  
361 may enter any long-term care facility involved in an appeal,  
362 pursuant to the conditions specified in s. 400.0074(2)  
363 ~~400.0069(3).~~

364 (c) Assist the ombudsman to discover, investigate, and  
365 determine the existence of abuse or neglect in any long-term  
366 care facility and work with the adult protective services  
367 program as required in ss. 415.101-415.113. ~~The Department of~~  
368 ~~Elderly Affairs shall develop procedures relating to such~~  
369 ~~investigations. Investigations may consist, in part, of one or~~  
370 ~~more onsite administrative inspections.~~

371 (d) Assist the ombudsman in eliciting, receiving,  
372 responding to, and resolving complaints made by or on behalf of  
373 ~~long term care facility residents and in developing procedures~~  
374 ~~relating to the receipt and resolution of such complaints. The~~  
375 ~~secretary shall approve all such procedures.~~

376 (e) Elicit and coordinate state, local, and voluntary  
377 organizational assistance for the purpose of improving the care  
378 received by residents ~~of a long term care facility.~~

379 (f) Assist the ombudsman in preparing the annual report  
380 described in s. 400.0065. ~~Prepare an annual report describing~~  
381 ~~the activities carried out by the ombudsman and the State Long-~~  
382 ~~Term Care Ombudsman Council in the year for which the report is~~  
383 ~~prepared. The State Long Term Care Ombudsman Council shall~~

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384 ~~submit the report to the Secretary of Elderly Affairs. The~~  
385 ~~secretary shall in turn submit the report to the Commissioner of~~  
386 ~~the United States Administration on Aging, the Governor, the~~  
387 ~~President of the Senate, the Speaker of the House of~~  
388 ~~Representatives, the minority leaders of the House and Senate,~~  
389 ~~the chairpersons of appropriate House and Senate committees, the~~  
390 ~~Secretary of Children and Family Services, and the Secretary of~~  
391 ~~Health Care Administration. The report shall be submitted by the~~  
392 ~~Secretary of Elderly Affairs at least 30 days before the~~  
393 ~~convening of the regular session of the Legislature and shall,~~  
394 ~~at a minimum.~~

- 395 ~~1. Contain and analyze data collected concerning~~  
396 ~~complaints about and conditions in long term care facilities.~~
- 397 ~~2. Evaluate the problems experienced by residents of long-~~  
398 ~~term care facilities.~~
- 399 ~~3. Contain recommendations for improving the quality of~~  
400 ~~life of the residents and for protecting the health, safety,~~  
401 ~~welfare, and rights of the residents.~~
- 402 ~~4. Analyze the success of the ombudsman program during the~~  
403 ~~preceding year and identify the barriers that prevent the~~  
404 ~~optimal operation of the program. The report of the program's~~  
405 ~~successes shall also address the relationship between the state~~  
406 ~~long term care ombudsman program, the Department of Elderly~~  
407 ~~Affairs, the Agency for Health Care Administration, and the~~  
408 ~~Department of Children and Family Services, and an assessment of~~  
409 ~~how successfully the state long term care ombudsman program has~~  
410 ~~carried out its responsibilities under the Older Americans Act.~~

411 ~~5. Provide policy and regulatory and legislative~~  
 412 ~~recommendations to solve identified problems; resolve residents'~~  
 413 ~~complaints; improve the quality of care and life of the~~  
 414 ~~residents; protect the health, safety, welfare, and rights of~~  
 415 ~~the residents; and remove the barriers to the optimal operation~~  
 416 ~~of the state long-term care ombudsman program.~~

417 ~~6. Contain recommendations from the local ombudsman~~  
 418 ~~councils regarding program functions and activities.~~

419 ~~7. Include a report on the activities of the legal~~  
 420 ~~advocate and other legal advocates acting on behalf of the local~~  
 421 ~~and state councils.~~

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

426 (a) Each local council shall elect by majority vote a  
 427 representative from among the council members to represent the  
 428 interests of the local council on the state council. A local  
 429 council chair may not serve as the representative of the local  
 430 council on the state council.

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



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

440           3. If the Governor does not appoint an at-large member to  
441 fill a vacant position ~~Governor's appointments are not made~~  
442 within 60 days after ~~the ombudsman submits~~ the list is  
443 submitted, the secretary, after consulting with the ombudsman,  
444 ~~in consultation with the secretary,~~ shall appoint an at-large  
445 member to fill that vacant position ~~three members, one of whom~~  
446 ~~must be over 60 years of age.~~

447           (c)1. All state council members shall ~~be appointed to~~  
448 serve 3-year terms.

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

451           3. A local council may recommend removal of its elected  
452 representative from the state council by a majority vote. If the  
453 council votes to remove its representative, the local council  
454 chair shall immediately notify the ombudsman. The secretary  
455 shall advise the Governor of the local council's vote upon  
456 receiving notice from the ombudsman. ~~Any vacancy shall be filled~~  
457 ~~in the same manner as the original appointment.~~

458           4. The position of any member missing three state council  
459 meetings within a 1-year period ~~consecutive regular meetings~~  
460 without cause may ~~shall~~ be declared vacant by the ombudsman. The  
461 findings of the ombudsman regarding cause shall be final and  
462 binding.

463           5. Any vacancy on the state council shall be filled in the  
464 same manner as the original appointment.

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

469           2. The chair ~~chairperson~~ shall select a vice chair  
 470 ~~chairperson~~ from among the members. The vice chair ~~chairperson~~  
 471 shall preside over the state council in the absence of the chair  
 472 ~~chairperson.~~

473           3. The chair may create additional executive positions as  
 474 necessary to carry out the duties of the state council. Any  
 475 person appointed to an executive position shall serve at the  
 476 pleasure of the chair, and his or her term shall expire on the  
 477 same day as the term of the chair.

478           4. A chair may be immediately removed from office prior to  
 479 the expiration of his or her term by a vote of two-thirds of all  
 480 state council members present at any meeting at which a quorum  
 481 is present. If a chair is removed from office prior to the  
 482 expiration of his or her term, a replacement chair shall be  
 483 chosen during the same meeting in the same manner as described  
 484 in this paragraph, and the term of the replacement chair shall  
 485 begin immediately. The replacement chair shall serve for the  
 486 remainder of the term and is eligible to serve two subsequent  
 487 consecutive terms.

488           (e)1. The state ~~ombudsman~~ council shall meet upon the call  
 489 of the chair or upon the call of the ombudsman. The council  
 490 shall meet ~~chairperson,~~ at least quarterly but may meet ~~or~~ more  
 491 frequently as needed.

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

495           3. The state council may not vote on or otherwise make any  
496 decisions resulting in a recommendation that will directly  
497 impact the state council or any local council outside of a  
498 publicly noticed meeting at which a quorum is present.

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

502           ~~(4) No officer, employee, or representative of the Office~~  
503 ~~of State Long-Term Care Ombudsman or of the State Long-Term Care~~  
504 ~~Ombudsman Council, nor any member of the immediate family of~~  
505 ~~such officer, employee, or representative, may have a conflict~~  
506 ~~of interest. The ombudsman shall adopt rules to identify and~~  
507 ~~remove conflicts of interest.~~

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

511           Section 7. Section 400.0069, Florida Statutes, is amended  
512 to read:

513           400.0069 Local long-term care ombudsman councils; duties;  
514 membership.--

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

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519           **(b) The ombudsman shall ensure that there is** ~~There shall~~  
520 ~~be~~ **at least one local long term care ombudsman council operating**  
521 **in each of the department's planning and service areas of the**  
522 ~~Department of Elderly Affairs, which shall function under the~~  
523 ~~direction of the ombudsman and the state ombudsman council. The~~  
524 **ombudsman may create additional local councils as necessary to**  
525 **ensure that residents throughout the state have adequate access**  
526 **to State Long-Term Care Ombudsman Program services. The**  
527 **ombudsman, after approval from the secretary, shall designate**  
528 **the jurisdictional boundaries of each local council.**

529           (2) The duties of the local ~~ombudsman council~~ **councils** are  
530 **to:**

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

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

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

542           (d) ~~To~~ Review and, if necessary, ~~to~~ comment on, ~~for their~~  
543 ~~effect on the rights of long term care facility residents,~~ all  
544 existing or proposed rules, regulations, and other governmental  
545 policies **and actions** relating to long-term care facilities **that**

546 | may potentially have an effect on the rights, health, safety,  
547 | and welfare of residents.

548 |       (e) ~~To~~ Review personal property and money accounts of  
549 | ~~Medicaid~~ residents who are receiving assistance under the  
550 | Medicaid program pursuant to an investigation to obtain  
551 | information regarding a specific complaint or problem.

552 |       (f) Recommend that the ombudsman and the legal advocate ~~To~~  
553 | ~~represent the interests of residents before government agencies~~  
554 | ~~and to~~ seek administrative, legal, and other remedies to protect  
555 | the health, safety, welfare, and rights of the residents.

556 |       (g) ~~To~~ Carry out other activities that the ombudsman  
557 | determines to be appropriate.

558 |       (3) In order to carry out the duties specified in  
559 | subsection (2), a member of a ~~the~~ local ~~ombudsman~~ council is  
560 | authorized, ~~pursuant to ss. 400.19(1) and 400.434,~~ to enter any  
561 | long-term care facility without notice or first obtaining a  
562 | warrant, subject to the provisions of s. 400.0074(2)  
563 | ~~400.0073(5).~~

564 |       (4) Each local ~~ombudsman~~ council shall be composed of  
565 | members whose primary residence is located within the boundaries  
566 | of the local council's jurisdiction.

567 |       (a) The ombudsman shall strive to ensure that each local  
568 | council ~~no less than 15 members and no more than 40 members from~~  
569 | ~~the local planning and service area,~~ to include the following  
570 | persons as members:

571 |           1. At least one medical or osteopathic physician whose  
572 | practice includes or has included a substantial number of

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573 | geriatric patients and who may ~~have limited~~ practice in a long-  
574 | term care facility;

575 |       2. At least one registered nurse who has geriatric  
576 | experience, ~~if possible~~;

577 |       3. At least one licensed pharmacist;

578 |       4. At least one registered dietitian;

579 |       5. At least six nursing home residents or representative  
580 | consumer advocates for nursing home residents;

581 |       6. At least three residents of assisted living facilities  
582 | or adult family-care homes or three representative consumer  
583 | advocates for alternative long-term care facility residents;

584 |       7. At least one attorney; and

585 |       8. At least one professional social worker.

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

597 |       (5) (a) Individuals wishing to join a local council shall  
598 | submit an application to the ombudsman. The ombudsman shall  
599 | review the individual's application and advise the secretary of  
600 | his or her recommendation for approval or disapproval of the

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601 candidate's membership on the local council. If the secretary  
602 approves of the individual's membership, the individual shall be  
603 appointed as a member of the local council.

604 (b) The secretary may rescind the ombudsman's approval of  
605 a member on a local council at any time. If the secretary  
606 rescinds the approval of a member on a local council, the  
607 ombudsman shall ensure that the individual is immediately  
608 removed from the local council on which he or she serves and the  
609 individual may no longer represent the State Long-Term Care  
610 Ombudsman Program until the secretary provides his or her  
611 approval.

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

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

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629 ~~has notified the Governor of his or her recommendation, the~~  
 630 ~~replacement shall be considered disapproved and the process for~~  
 631 ~~selection of a replacement shall be repeated.~~

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

636 (b) The chair shall select a vice chair from among the  
 637 members of the council. The vice chair shall preside over the  
 638 council in the absence of the chair.

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

644 (d) A chair may be immediately removed from office prior  
 645 to the expiration of his or her term by a vote of two-thirds of  
 646 the members of the local council. If any chair is removed from  
 647 office prior to the expiration of his or her term, a replacement  
 648 chair shall be elected during the same meeting, and the term of  
 649 the replacement chair shall begin immediately. The replacement  
 650 chair shall serve for the remainder of the term of the person he  
 651 or she replaced.

652 (7) Each ~~The~~ local ~~ombudsman~~ council shall meet upon the  
 653 call of its ~~the~~ chair or upon the call of the ombudsman. Each  
 654 local council shall meet, at least once a month but may meet ~~or~~  
 655 more frequently if necessary ~~as needed to handle emergency~~  
 656 ~~situations.~~



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657 (8) A member of a local ~~ombudsman~~ council shall receive no  
658 compensation but shall, with approval from the ombudsman, be  
659 reimbursed for travel expenses both within and outside the  
660 jurisdiction of the local council ~~county of residence~~ in  
661 accordance with the provisions of s. 112.061.

662 (9) The local ~~ombudsman~~ councils are authorized to call  
663 upon appropriate agencies of state government for such  
664 professional assistance as may be needed in the discharge of  
665 their duties. All state agencies shall cooperate with the local  
666 ~~ombudsman~~ councils in providing requested information and agency  
667 representation ~~representatives~~ at council meetings.

668 ~~(10) No officer, employee, or representative of a local~~  
669 ~~long term care ombudsman council, nor any member of the~~  
670 ~~immediate family of such officer, employee, or representative,~~  
671 ~~may have a conflict of interest. The ombudsman shall adopt rules~~  
672 ~~to identify and remove conflicts of interest.~~

673 Section 8. Section 400.0070, Florida Statutes, is created  
674 to read:

675 400.0070 Conflicts of interest.--

676 (1) The ombudsman shall not:

677 (a) Have a direct involvement in the licensing or  
678 certification of, or an ownership or investment interest in, a  
679 long-term care facility or a provider of a long-term care  
680 service.

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

683 (c) Receive, or have a right to receive, directly or  
684 indirectly, remuneration, in cash or in kind, under a

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685 compensation agreement with the owner or operator of a long-term  
686 care facility.

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

690 (3) The department shall define by rule:

691 (a) Situations that constitute a person having a conflict  
692 of interest that could materially affect the objectivity or  
693 capacity of a person to serve on an ombudsman council, or as an  
694 employee of the office, while carrying out the purposes of the  
695 State Long-Term Care Ombudsman Program as specified in this  
696 part.

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

699 Section 9. Section 400.0071, Florida Statutes, is amended  
700 to read:

701 400.0071 State Long-Term Care Ombudsman Program complaint  
702 procedures.--

703 ~~(1) The department state ombudsman council shall adopt~~  
704 rules pursuant to ss. 120.536(1) and 120.54 to implement  
705 ~~recommend to the ombudsman and the secretary state and local~~  
706 complaint procedures. The rules shall include procedures for:

707 (1) Receiving complaints against a nursing home or long-  
708 term care facility or an ~~its~~ employee of a long-term care  
709 facility.

710 (2) Conducting investigations of a long-term care facility  
711 or an employee of a long-term care facility subsequent to  
712 receiving a complaint.

713           (3) Conducting onsite administrative assessments of long-  
 714 term care facilities. ~~The procedures shall be implemented after~~  
 715 ~~the approval of the ombudsman and the secretary.~~

716           ~~(2) These procedures shall be posted in full view in every~~  
 717 ~~nursing home or long term care facility. Every resident or~~  
 718 ~~representative of a resident shall receive, upon admission to a~~  
 719 ~~nursing home or long term care facility, a printed copy of the~~  
 720 ~~procedures of the state and the local ombudsman councils.~~

721           Section 10. Section 400.0073, Florida Statutes, is amended  
 722 to read:

723           400.0073 State and local ombudsman council  
 724 investigations.--

725           (1) A local ~~ombudsman~~ council shall investigate, within a  
 726 reasonable time after a complaint is made, any complaint of a  
 727 resident, a ~~or~~ representative of a resident, or any other  
 728 credible source based on an action or omission by an  
 729 administrator, an ~~or~~ employee, or a representative of a ~~nursing~~  
 730 ~~home or~~ long-term care facility which might be:

- 731           (a) Contrary to law;
- 732           (b) Unreasonable, unfair, oppressive, or unnecessarily  
 733 discriminatory, even though in accordance with law;
- 734           (c) Based on a mistake of fact;
- 735           (d) Based on improper or irrelevant grounds;
- 736           (e) Unaccompanied by an adequate statement of reasons;
- 737           (f) Performed in an inefficient manner; or
- 738           (g) Otherwise adversely affecting the health, safety,  
 739 welfare, or rights of a resident erroneous.

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

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

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

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

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

769           ~~(b) No advance notice of an inspection shall be provided~~  
770 ~~to any nursing home or long term care facility, except that~~  
771 ~~notice of followup inspections on specific problems may be~~  
772 ~~provided.~~

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

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

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

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

788           ~~(g) No ombudsman council member shall enter a single~~  
789 ~~family residential unit within a long term care facility without~~  
790 ~~the permission of the resident or the representative of the~~  
791 ~~resident.~~

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

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

799 Section 11. Section 400.0074, Florida Statutes, is created  
800 to read:

801 400.0074 Local ombudsman council onsite administrative  
802 assessments.--

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

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

814 (a) To the extent possible and reasonable, the  
815 administrative assessments shall not duplicate the efforts of  
816 the agency surveys and inspections conducted under parts II,  
817 III, and VII of this chapter.

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

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

824        (d) A local council member physically present for the  
825 administrative assessment shall identify himself or herself and  
826 cite the specific statutory authority for his or her assessment  
827 of the facility.

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

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

834        (g) An administrative assessment shall be conducted in a  
835 manner that will impose no unreasonable burden on the long-term  
836 care facility.

837        (3) Regardless of jurisdiction, the ombudsman may  
838 authorize a state or local council member to assist another  
839 local council to perform the administrative assessments  
840 described in this section.

841        (4) An onsite administrative assessment may not be  
842 accomplished by forcible entry. However, if the ombudsman or a  
843 state or local council member is not allowed to enter a long-  
844 term care facility, the administrator of the facility shall be  
845 considered to have interfered with a representative of the

846 | office, the state council, or the local council in the  
 847 | performance of official duties as described in s. 400.0083(1)  
 848 | and to have committed a violation of this part. The ombudsman  
 849 | shall report the refusal by a facility to allow entry to the  
 850 | agency, and the agency shall record the report and take it into  
 851 | consideration when determining actions allowable under s.  
 852 | 400.102, s. 400.121, s. 400.414, s. 400.419, s. 400.6194, or s.  
 853 | 400.6196.

854 | Section 12. Section 400.0075, Florida Statutes, is amended  
 855 | to read:

856 | 400.0075 Complaint notification and resolution  
 857 | procedures.--

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



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

875           2.~~(b)~~ In accordance with s. 400.0077, publicize the  
876 complaint, the recommendations of the council, and the response  
877 of the long-term care facility.

878           3.~~(c)~~ Refer the complaint to the state ~~ombudsman~~ council.

879           (b) If the local council chair believes that the health,  
880 safety, welfare, or rights of the resident are in imminent  
881 danger, the chair shall notify the ombudsman or legal advocate,  
882 who, after verifying that such imminent danger exists, shall  
883 local long-term care ombudsman council may seek immediate legal  
884 or administrative remedies to protect the resident.

885           (c) If the ombudsman has reason to believe that the long-  
886 term care facility or an employee of the facility has committed  
887 a criminal act, the ombudsman shall provide the local law  
888 enforcement agency with the relevant information to initiate an  
889 investigation of the case.

890           (2) (a) Upon referral from a ~~the~~ local ombudsman ~~council,~~  
891 the state ombudsman ~~council shall assume the responsibility for~~  
892 the disposition of the complaint. If a long-term care facility  
893 fails to take action on a complaint found valid by the state  
894 ombudsman ~~council, the state council may, after obtaining~~  
895 approval from the ombudsman and a majority of the state council  
896 members:

897           1.~~(a)~~ In accordance with s. 400.0077, publicize the  
898 complaint, the recommendations of the local or state council,  
899 and the response of the long-term care facility.

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900        ~~2.(b)~~ Recommend to the department and the agency a series  
901 of facility reviews pursuant to s. 400.19(4), s. 400.434, or s.  
902 400.619 to ensure ~~assure~~ correction and nonrecurrence of  
903 conditions that give rise to complaints against a long-term care  
904 facility.

905        ~~(c) Recommend to the agency changes in rules for~~  
906 ~~inspecting and licensing or certifying long term care~~  
907 ~~facilities, and recommend to the Agency for Health Care~~  
908 ~~Administration changes in rules for licensing and regulating~~  
909 ~~long term care facilities.~~

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

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

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

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

922        (b) If the state council chair believes that the health,  
923 safety, welfare, or rights of the resident are in imminent  
924 danger, the chair shall notify the ombudsman or legal advocate,  
925 who, after verifying that such imminent danger exists, State  
926 ~~Long Term Care Ombudsman Council~~ shall seek immediate legal or  
927 administrative remedies to protect the resident.

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928        (c) If the ombudsman has reason to believe that the long-  
929 term care facility or an employee of the facility has committed  
930 a criminal act, the ombudsman shall provide local law  
931 enforcement with the relevant information to initiate an  
932 investigation of the case.

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

937        Section 13. Section 400.0078, Florida Statutes, is amended  
938 to read:

939        400.0078 Citizen access to State Long-Term Care Ombudsman  
940 Program services ~~Statewide toll free telephone number.--~~

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

945        (2) Every resident or representative of a resident shall  
946 receive, upon admission to a long-term care facility,  
947 information regarding the purpose of the State Long-Term Care  
948 Ombudsman Program, the statewide toll-free telephone number for  
949 receiving complaints, and other relevant information regarding  
950 how to contact the program. Residents or their representatives  
951 must be furnished additional copies of this information upon  
952 request.

953        Section 14. Section 400.0079, Florida Statutes, is amended  
954 to read:

955        400.0079 Immunity.--

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

961 (2) The ombudsman or any person authorized by the  
 962 ombudsman to act ~~acting~~ on behalf of the office, as well as all  
 963 members of State Long Term Care Ombudsman or the state and or a  
 964 local councils, ~~long term care ombudsman council~~ shall be immune  
 965 from any liability, civil or criminal, that otherwise might be  
 966 incurred or imposed, during the good faith performance of  
 967 official duties.

968 Section 15. Section 400.0081, Florida Statutes, is amended  
 969 to read:

970 400.0081 Access to facilities, residents, and records.--

971 (1) A long-term care facility shall provide the office of  
 972 ~~State Long Term Care Ombudsman,~~ the state ~~Long Term Care~~  
 973 ~~Ombudsman~~ council and its members, and the local councils and  
 974 their members ~~long term care ombudsman councils, or their~~  
 975 ~~representatives,~~ shall have access to:

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

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

981 1. The office has the permission of the resident or the  
 982 legal representative of the resident; or

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983 |           2. The resident is unable to consent to the review and has  
984 | no legal representative.

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

987 |           1. A legal representative ~~guardian~~ of the resident refuses  
988 | to give permission;~~-~~

989 |           2. The office has reasonable cause to believe that the  
990 | representative ~~guardian~~ is not acting in the best interests of  
991 | the resident; ~~and-~~

992 |           3. The state or local council member ~~representative~~  
993 | obtains the approval of the ombudsman.

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

996 |           (e) Upon request, copies of all licensing and  
997 | certification records maintained by the state with respect to a  
998 | long-term care facility.

999 |           ~~(2) Notwithstanding paragraph (1) (b), if, pursuant to a~~  
1000 | ~~complaint investigation by the state ombudsman council or a~~  
1001 | ~~local ombudsman council, the legal representative of the~~  
1002 | ~~resident refuses to give permission for the release of the~~  
1003 | ~~resident's records, and if the Office of State Long Term Care~~  
1004 | ~~Ombudsman has reasonable cause to find that the legal~~  
1005 | ~~representative is not acting in the best interests of the~~  
1006 | ~~resident, the medical and social records of the resident must be~~  
1007 | ~~made available to the state or local council as is necessary for~~  
1008 | ~~the members of the council to investigate the complaint.~~

1009 |           (2) (3) The department of ~~Elderly Affairs~~, in consultation  
1010 | with the ombudsman and the state ~~Long Term Care Ombudsman~~

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1011 council, may ~~shall~~ adopt rules to establish procedures to ensure  
1012 access to facilities, residents, and records as described in  
1013 this section.

1014 Section 16. Section 400.0083, Florida Statutes, is amended  
1015 to read:

1016 400.0083 Interference; retaliation; penalties.--

1017 (1) It shall be unlawful for any person, long-term care  
1018 facility, or other entity to willfully interfere with a  
1019 representative of the office ~~of State Long-Term Care Ombudsman,~~  
1020 the state ~~Long-Term Care Ombudsman~~ council, or a local ~~long term~~  
1021 ~~care ombudsman~~ council in the performance of official duties.

1022 (2) It shall be unlawful for any person, long-term care  
1023 facility, or other entity to knowingly or willfully take action  
1024 or retaliate against any resident, employee, or other person for  
1025 filing a complaint with, providing information to, or otherwise  
1026 cooperating with any representative of the office ~~of State Long-~~  
1027 ~~Term Care Ombudsman,~~ the state ~~Long-Term Care Ombudsman~~ council,  
1028 or a local ~~long term care ombudsman~~ council.

1029 (3) ~~(a)~~ Any person, long-term care facility, or other  
1030 entity that ~~who~~ violates this section:

1031 (a) Shall be liable for damages and equitable relief as  
1032 determined by law.

1033 ~~(b) Any person, long term care facility, or other entity~~  
1034 ~~who violates this section~~ Commits a misdemeanor of the second  
1035 degree, punishable as provided in s. 775.083.

1036 Section 17. Section 400.0085, Florida Statutes, is  
1037 repealed.

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1038 Section 18. Section 400.0087, Florida Statutes, is amended  
1039 to read:

1040 400.0087 Department Agency oversight; funding.--

1041 (1) The department shall meet the costs associated with  
1042 the State Long-Term Care Ombudsman Program from funds  
1043 appropriated to it.

1044 (a) The department shall include the costs associated with  
1045 support of the State Long-Term Care Ombudsman Program when  
1046 developing its budget requests for consideration by the Governor  
1047 and submittal to the Legislature.

1048 (b) The department may divert from the federal ombudsman  
1049 appropriation an amount equal to the department's administrative  
1050 cost ratio to cover the costs associated with administering the  
1051 program. The remaining allotment from the Older Americans Act  
1052 program shall be expended on direct ombudsman activities.

1053 (2)-(1) The department of ~~Elderly Affairs~~ shall monitor the  
1054 office, the state council, and the local ~~ombudsman~~ councils to  
1055 ensure that each is responsible for carrying out the duties  
1056 delegated to it by state by s. ~~400.0069~~ and federal law. The  
1057 department, in consultation with the ombudsman, shall adopt  
1058 rules to establish the policies and procedures for the  
1059 monitoring of local ombudsman councils.

1060 (3)-(2) The department is responsible for ensuring that the  
1061 office:

1062 (a) Has the objectivity and independence required to  
1063 qualify it for funding under the federal Older Americans Act.

1064 (b) of State Long-Term Care Ombudsman Provides information  
1065 to public and private agencies, legislators, and others.

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1066           (c) Provides appropriate training to representatives of  
1067 the office or of the state or local ~~long term care ombudsman~~  
1068 ~~councils.~~ and

1069           (d) Coordinates ombudsman services with the Advocacy  
1070 Center for Persons with Disabilities and with providers of legal  
1071 services to residents of long-term care facilities in compliance  
1072 with state and federal laws.

1073           ~~(4)(3) The department of Elderly Affairs is the designated~~  
1074 ~~state unit on aging for purposes of complying with the federal~~  
1075 ~~Older Americans Act. The Department of Elderly Affairs shall~~  
1076 ~~ensure that the ombudsman program has the objectivity and~~  
1077 ~~independence required to qualify it for funding under the~~  
1078 ~~federal Older Americans Act, and shall carry out the long term~~  
1079 ~~care ombudsman program through the Office of State Long Term~~  
1080 ~~Care Ombudsman. The Department of Elderly Affairs shall also:~~

1081           (a) Receive and disburse state and federal funds for  
1082 purposes that the ~~state ombudsman council~~ has formulated in  
1083 accordance with the Older Americans Act.

1084           (b) Whenever necessary, act as liaison between agencies  
1085 and branches of the federal and state governments and the State  
1086 Long-Term Care Ombudsman Program representatives, ~~the staffs of~~  
1087 ~~the state and local ombudsman councils, and members of the state~~  
1088 ~~and local ombudsman councils.~~

1089           Section 19. Section 400.0089, Florida Statutes, is amended  
1090 to read:

1091           400.0089 Complaint data Agency reports.--The office  
1092 ~~Department of Elderly Affairs~~ shall maintain a statewide uniform  
1093 reporting system to collect and analyze data relating to



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1094 | complaints and conditions in long-term care facilities and to  
 1095 | residents, for the purpose of identifying and resolving  
 1096 | significant problems. ~~The department and the State Long-Term~~  
 1097 | ~~Care Ombudsman Council shall submit such data as part of its~~  
 1098 | ~~annual report required pursuant to s. 400.0067(2)(f) to the~~  
 1099 | ~~Agency for Health Care Administration, the Department of~~  
 1100 | ~~Children and Family Services, the Florida Statewide Advocacy~~  
 1101 | ~~Council, the Advocacy Center for Persons with Disabilities, the~~  
 1102 | ~~Commissioner for the United States Administration on Aging, the~~  
 1103 | ~~National Ombudsman Resource Center, and any other state or~~  
 1104 | ~~federal entities that the ombudsman determines appropriate.~~ The  
 1105 | office State Long-Term Care Ombudsman Council shall publish  
 1106 | quarterly and make readily available information pertaining to  
 1107 | the number and types of complaints received by the State Long-  
 1108 | Term Care Ombudsman Program and shall include such information  
 1109 | in the annual report required under s. 400.0065.

1110 | Section 20. Section 400.0091, Florida Statutes, is amended  
 1111 | to read:

1112 | 400.0091 Training.--The ombudsman shall ensure that  
 1113 | ~~provide~~ appropriate training is provided to all employees of the  
 1114 | ~~office of State Long-Term Care Ombudsman~~ and to the members of  
 1115 | the state and local ~~long-term care ombudsman~~ councils, ~~including~~  
 1116 | ~~all unpaid volunteers.~~

1117 | (1) All state and local council members ~~volunteers~~ and  
 1118 | ~~appropriate~~ employees of the office shall ~~of State Long-Term~~  
 1119 | ~~Care Ombudsman~~ ~~must~~ be given a minimum of 20 hours of training  
 1120 | upon employment with the office or approval ~~enrollment~~ as a

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1121 state or local council member ~~volunteer~~ and 10 hours of  
1122 continuing education annually thereafter.

1123 (2) The ombudsman shall approve the curriculum for the  
1124 initial and continuing education training, which must ~~cover~~, at  
1125 a minimum, address:

1126 (a) Resident confidentiality.

1127 (b) Guardianships and powers of attorney.

1128 (c) Medication administration.

1129 (d) Care and medication of residents with dementia and  
1130 Alzheimer's disease.

1131 (e) Accounting for residents' funds.

1132 (f) Discharge rights and responsibilities. ~~and~~

1133 (g) Cultural sensitivity.

1134 (h) Any other topic recommended by the secretary.

1135 (3) No employee, officer, or representative of the office  
1136 or of the state or local ~~long term care ombudsman~~ councils,  
1137 other than the ombudsman, may hold himself or herself out as a  
1138 representative of the State Long-Term Care Ombudsman Program or  
1139 conduct ~~carry out~~ any authorized program ~~ombudsman~~ duty  
1140 described in this part ~~or responsibility~~ unless the person has  
1141 received the training required by this section and has been  
1142 certified ~~approved~~ by the ombudsman as qualified to carry out  
1143 ombudsman activities on behalf of the office or the state or  
1144 local ~~long term care ombudsman~~ councils.

1145 Section 21. This act shall take effect upon becoming a  
1146 law.