

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative(s) Benson offered the following:

2
3 **Amendment (with title amendment)**

4 On page 1, between line(s) 24 and 25, insert:

5 Section 1. Subsection (1) and paragraph (b) of subsection
6 (2) of section 402.164, Florida Statutes, are amended to read:

7 402.164 Legislative intent; definitions.--

8 (1)(a) It is the intent of the Legislature to use citizen
9 volunteers as members of the Florida Statewide Advocacy Council
10 and the Florida local advocacy councils, and to have volunteers
11 operate a network of councils that shall, without interference
12 by an executive agency, undertake to discover, monitor,
13 investigate, and determine the presence of conditions or
14 individuals that constitute a threat to the rights, health,
15 safety, or welfare of persons who receive services from state
16 agencies.

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17 (b) It is the further intent of the Legislature that the
18 monitoring and investigation shall safeguard the health, safety,
19 and welfare of consumers of services provided by these state
20 agencies.

21 (c) It is the further intent of the Legislature that state
22 agencies cooperate with the councils in forming interagency
23 agreements to provide the councils with authorized client
24 records so that the councils may monitor services and
25 investigate claims.

26 (2) As used in ss. 402.164-402.167, the term:

27 (b) "Client" means a client of the Agency for Persons with
28 Disabilities, the Agency for Health Care Administration, the
29 Department of Children and Family Services, or the Department of
30 Elderly Affairs, as defined in s. 393.063, s. 394.67, s.
31 397.311, or s. 400.960, a forensic client or client as defined
32 in s. 916.106, a child or youth as defined in s. 39.01, a child
33 as defined in s. 827.01, a family as defined in s. 414.0252, a
34 participant as defined in s. 400.551, a resident as defined in
35 s. 400.402, a Medicaid recipient or recipient as defined in s.
36 409.901, a child receiving child care as defined in s. 402.302,
37 a disabled adult as defined in s. 410.032 or s. 410.603, or a
38 victim as defined in s. 39.01 or s. 415.102 as each definition
39 applies within its respective chapter.

40 Section 2. Subsections (2), (5), and (7) and paragraph (a)
41 of subsection (8) of section 402.165, Florida Statutes, are
42 amended to read:

43 402.165 Florida Statewide Advocacy Council; confidential
44 records and meetings.--

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45 (2) Members of the statewide council shall be appointed to
46 serve terms of 4 years, subject to termination at the pleasure
47 of the Governor prior to expiration of such period. A member may
48 not serve more than two full consecutive terms.

49 (5) (a) Members of the statewide council shall receive no
50 compensation, but are entitled to be reimbursed for per diem and
51 travel expenses in accordance with s. 112.061.

52 (b) The Governor shall select an executive director who
53 shall serve at the pleasure of the Governor and shall perform
54 the duties delegated to him or her by the council. The
55 compensation of the executive director and staff shall be
56 established in accordance with the rules of the Selected Exempt
57 Service. The Governor shall give priority consideration in the
58 selection of an executive director to an individual with
59 professional expertise in research design, statistical analysis,
60 or agency evaluation and analysis.

61 (c) The council may apply for, receive, and accept grants,
62 gifts, donations, bequests, and other payments including money
63 or property, real or personal, tangible or intangible, and
64 service from any governmental or other public or private entity
65 or person and make arrangements as to the use of same.

66 (d) The statewide council shall annually prepare a budget
67 request that, after it is approved by the council, shall be
68 submitted to the Governor. The budget shall include a request
69 for funds to carry out the activities of the statewide council
70 and the local councils.

71 (7) The responsibilities of the statewide council include,
72 but are not limited to:

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73 (a) Serving as an independent third-party mechanism for
74 protecting the constitutional and human rights of clients within
75 programs or facilities operated, funded, or contracted by any
76 state agency that provides client services.

77 (b) Monitoring, by site visit and through access to
78 records, the delivery and use of services, programs, or
79 facilities operated, funded, or contracted by any state agency
80 that provides client services, for the purpose of preventing
81 abuse or deprivation of the constitutional and human rights of
82 clients. The statewide council may conduct an unannounced site
83 visit or monitoring visit that involves the inspection of
84 records if the visit is conditioned upon a complaint. A
85 complaint may be generated by the council itself, after
86 consulting with the Governor's office, if information from any
87 state agency that provides client services or from other sources
88 indicates a situation at the program or facility that indicates
89 possible abuse or neglect or deprivation of the constitutional
90 and human rights of clients. The statewide council shall
91 establish and follow uniform criteria for the review of
92 information and generation of complaints. The statewide council
93 shall develop a written protocol for all complaints it generates
94 to provide the Governor's office with information including the
95 nature of the abuse or neglect, the agencies involved, the
96 populations or numbers of individuals affected, the types of
97 records necessary to complete the investigation, and a strategy
98 for approaching the problem. Routine program monitoring and
99 reviews that do not require an examination of records may be
100 made unannounced.

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101 (c) Receiving, investigating, and resolving reports of
102 abuse or deprivation of constitutional and human rights referred
103 to the statewide council by a local council. If a matter
104 constitutes a threat to the life, safety, or health of clients
105 or is multiservice-area in scope, the statewide council may
106 exercise its powers without the necessity of a referral from a
107 local council.

108 (d) Reviewing existing programs or services and new or
109 revised programs of the state agencies that provide client
110 services and making recommendations as to how the rights of
111 clients are affected.

112 (e) Submitting an annual report to the Legislature, no
113 later than December 30 of each calendar year, concerning
114 activities, recommendations, and complaints reviewed or
115 developed by the council during the year.

116 (f) Conducting meetings at least once ~~six times~~ a year at
117 the call of the chair and at other times at the call of the
118 Governor or by written request of eight ~~six~~ members of the
119 council, including the executive director.

120 (g) Developing and adopting uniform procedures to be used
121 to carry out the purpose and responsibilities of the statewide
122 council and the local councils.

123 (h) Supervising the operations of the local councils and
124 monitoring the performance and activities of all local councils
125 and providing technical assistance to members of local councils.

126 (i) Providing for the development and presentation of a
127 standardized training program for members of local councils.

128 (j) Developing and maintaining interagency agreements
129 between the council and the state agencies providing client
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130 services. The interagency agreements shall address the
131 coordination of efforts and identify the roles and
132 responsibilities of the statewide and local councils and each
133 agency in fulfillment of their responsibilities, including
134 access to records. The interagency agreements shall explicitly
135 define a process that the statewide and local councils shall use
136 to request records from the agency and shall define a process
137 for appeal when disputes about access to records arise between
138 agency staff and council members. Interagency agreements shall
139 be renewed annually and shall be completed and reported to the
140 Governor no later than February 1.

141 (8) (a) In the performance of its duties, the statewide
142 council shall have:

143 1. Authority to receive, investigate, seek to conciliate,
144 hold hearings on, and act on complaints that allege any abuse or
145 deprivation of constitutional or human rights of persons who
146 receive client services from any state agency.

147 2. Access to all client records, files, and reports from
148 any program, service, or facility that is operated, funded, or
149 contracted by any state agency that provides client services and
150 any records that are material to its investigation and are in
151 the custody of any other agency or department of government. The
152 council's investigation or monitoring shall not impede or
153 obstruct matters under investigation by law enforcement agencies
154 or judicial authorities. Access shall not be granted if a
155 specific procedure or prohibition for reviewing records is
156 required by federal law and regulation that supersedes state
157 law. Access shall not be granted to the records of a private
158 licensed practitioner who is providing services outside the
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159 state agency, or outside a state facility, and whose client is
160 competent and refuses disclosure.

161 3. Standing to petition the circuit court for access to
162 client records that are confidential as specified by law. The
163 petition shall be filed with notice and opportunity to be heard
164 by the state agency and shall state the specific reasons for
165 which the council is seeking access and the intended use of such
166 information. The circuit court may authorize council access to
167 the records upon a finding that access is directly related to an
168 investigation regarding the possible deprivation of
169 constitutional or human rights or the abuse of a client.
170 Original client files, agency records, and reports may not be
171 removed from a state agency, but copies must be provided to the
172 council and the local councils at the agency's expense. Under no
173 circumstance shall the council have access to confidential
174 adoption records once the adoption is finalized by a court in
175 accordance with ss. 39.0132, 63.022, and 63.162. Upon completion
176 of a general investigation of practices and procedures of a
177 state agency, the statewide council shall report its findings to
178 that agency.

179

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

181 On page 1, remove line(s) 2 and 3 and insert:

182 An act relating to health and human services; amending s.
183 402.164, F.S.; establishing legislative intent for the statewide
184 and local advocacy councils; revising a definition; amending s.
185 402.165, F.S.; providing for termination of members of the
186 statewide council; providing guidelines for selection of the
187 executive director of the Florida Statewide Advocacy Council;
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188 | establishing a process for investigating reports of abuse;
189 | revising council meeting requirements; providing requirements
190 | for interagency agreements; requiring interagency agreements to
191 | be renewed annually and submitted to the Governor by a specified
192 | date; providing additional requirements for the statewide
193 | council to petition the circuit court for access to certain
194 | records; amending s. 400.191, F.S.;