

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: CS/SB 1922

INTRODUCER: Health Care Committee and Senator Peaden

SUBJECT: The State Long-Term Care Ombudsman Program

DATE: March 22, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Garner	Wilson	HE	Fav/CS
2.			HA	
3.				
4.				
5.				
6.				

I. Summary:

This bill clarifies and revises the duties and responsibilities of the Office of the State Long-Term Care Ombudsman and the program's state and local ombudsman councils in an attempt to more directly move the program under the administration of the Department of Elderly Affairs (DOEA). The proposed changes in the bill are designed to:

- Centralize program operations within the Office of the State Long-Term Care Ombudsman;
- Clarify the role of volunteer ombudsmen to focus on the protection of long-term care facility residents rather than serve as an additional regulator of long-term care facilities;
- Remove barriers to volunteerism so the program can promptly recruit, train and deploy the number of volunteers needed to advocate for residents within their communities;
- Conform the function of the State Ombudsman and the state and local ombudsman councils more closely to the intent of the federal Older Americans Act (OAA) by clarifying the roles of staff and volunteers; and
- Strike any obsolete statutory language and better organize existing language for clarification.

This bill amends ss. 400.0060, 400.0061, 400.0063, 400.0065, 400.0067, 400.0069, 400.0071, 400.0073, 400.0075, 400.0078, 400.0079, 400.0081, 400.0083, 400.0087, 400.0089, and 400.0091, F.S.; creates ss. 400.0070 and 400.0074, F.S.; and repeals ss. 400.0066 and 400.0085, F.S.

II. Present Situation:

Long-term Care

Long-term care (LTC) refers to a broad range of supportive medical, personal and social services needed by people who are unable to meet their basic living needs for an extended period of time. This may be caused by accident, illness or frailty. Such conditions include the inability to move about, dress, bathe, eat, use a toilet, medicate and avoid incontinence. Also, care may be needed to help the disabled with household cleaning, preparing meals, shopping, paying bills, visiting the doctor, answering the phone and taking medications. Additional long-term care disabilities are due to cognitive impairment from stroke, depression, dementia, Alzheimer's disease, Parkinson's disease and other medical conditions that affect the brain.

It is estimated that approximately nine million men and women in the United States over the age of 65 needed LTC in 2005. By 2020, 12 million older Americans will need LTC. Most will be cared for at home (family and friends are the sole caregivers for 70 percent of the elderly). A study by the U.S. Department of Health and Human Services says that people who reach age 65 will likely have a 40 percent chance of entering a nursing home. About 10 percent of the people who enter a nursing home will stay there five years or more.¹

Florida is particularly affected by LTC issues as it has the highest proportion of persons aged 65 to 84 of any state in the nation, and this population is expected to grow 130 percent by 2025. In FY 2002-03, the Florida Medicaid Program spent \$3.2 billion (or 28 percent of the Medicaid budget) on four core LTC services: nursing homes; Intermediate Care Facilities for Persons with Development Disabilities; Home and Community Based Services waivers; and assistive care services.² The Florida Medicaid Program currently pays for 66 percent of all nursing home days for the frail elderly in Florida.

Abuse, Neglect, and Exploitation of the Elderly: Definitions

The major types of elder mistreatment can be grouped into three categories: physical, sexual, or emotional/psychological abuse; neglect and abandonment; and financial or material exploitation.

Physical, Sexual, or Emotional/Psychological Abuse

Physical abuse is defined as the use of physical force that may result in bodily injury, physical pain, or impairment. Physical abuse may include, but is not limited to, such acts of violence as striking (with or without an object), hitting, beating, pushing, shoving, shaking, slapping, kicking, pinching, and burning. In addition, inappropriate use of drugs and physical restraints, force-feeding, and physical punishment of any kind also are examples of physical abuse.

Sexual abuse is defined as non-consensual sexual contact of any kind with an elderly person. Sexual contact with any person incapable of giving consent is also considered sexual abuse. It

¹ United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. March 2005. Found at <http://www.medicare.gov/LongTermCare/Static/Home.asp>. (last visited on March 17, 2006)

² Agency for Health Care Administration. *Medicaid Long Term Care: Overview and Update*. Presentation to the Senate Health and Human Services Appropriations Committee. December 15, 2004.

includes, but is not limited to, unwanted touching, all types of sexual assault or battery, such as rape, sodomy, coerced nudity, and sexually explicit photographing.

Emotional or psychological abuse is defined as the infliction of anguish, pain, or distress through verbal or nonverbal acts. Emotional/psychological abuse includes but is not limited to verbal assaults, insults, threats, intimidation, humiliation, and harassment. In addition, treating an older person like an infant; isolating an elderly person from his/her family, friends, or regular activities; giving an older person the “silent treatment”; and enforced social isolation are examples of emotional/psychological abuse.

Neglect and Abandonment

Neglect is defined as the refusal or failure to fulfill any part of a person’s obligations or duties to an elder. Neglect may also include failure of a person who has fiduciary responsibilities to provide care for an elder (e.g., pay for necessary home care services) or the failure on the part of an in-home service provider to provide necessary care. Neglect also includes the refusal or failure to provide an elderly person with such life necessities as food, water, clothing, shelter, personal hygiene, medicine, comfort, personal safety, and other essentials included in an implied or agreed-upon responsibility to an elder.

Abandonment is defined as the desertion of an elderly person by an individual who has assumed responsibility for providing care for an elder, or by a person with physical custody of an elder.

Financial or Material Exploitation

Financial or material exploitation is defined as the illegal or improper use of an elder’s funds, property, or assets. Examples include, but are not limited to, cashing an elderly person’s checks without authorization or permission; forging an older person’s signature; misusing or stealing an older person’s money or possessions; coercing or deceiving an older person into signing any document (e.g., contracts or will); and the improper use of conservatorship, guardianship, or power of attorney.

Abuse, Neglect, and Exploitation of the Elderly: Prevalence

Protecting the elderly from abuse, neglect, and exploitation is a significant policy issue in the United States, whether it occurs in or outside the home. However, it is difficult to determine the severity of the problem because there are currently no official national statistics on the number of elderly that are abused, neglected, or exploited on an annual basis in the U.S. While evidence suggests that it is a significant problem, an accurate determination of the incidence of each is hindered by the lack of standard definitions, the lack of a uniform reporting system among states, and the lack of national data collection.

Without a nationwide tracking system, studies of prevalence and incidence conducted over the past few years by independent investigators have been crucial in helping researchers and

advocates to understand the magnitude of the problem. According to the best available estimates:³

- Between 1 and 2 million Americans age 65 or older have been injured, exploited, or otherwise mistreated by someone on whom they depended for care or protection;
- Estimates of the frequency of elder abuse range from 2 percent to 10 percent based on various sampling, survey methods, and case definitions;
- Data on elder abuse in domestic settings suggest that 1 in 14 incidents, excluding incidents of self-neglect, come to the attention of authorities;
- Current estimates put the overall reporting of financial exploitation at only 1 in 25 cases, suggesting that there may be at least 5 million financial abuse victims each year;
- It is estimated that for every one case of elder abuse, neglect, exploitation, or self-neglect reported to authorities, about five more go unreported.

The Older Americans Act (OAA) and Long-Term Care Ombudsman Programs

Started in 1972 as a demonstration program, the Long-Term Care Ombudsman Program today is established in all states under the Older Americans Act (OAA), which is administered by the U.S. Administration on Aging (AoA). Title VII of the OAA requires each state to create a long-term care ombudsman program in order to be eligible to receive funding associated with such programs under the OAA (see 42 U.S.C. 3058). The program is a statewide, volunteer-based system of councils that protect, defend and advocate on behalf of long-term care facility residents (generally nursing home, assisted living facility, and adult family-care home residents). Ombudsmen identify, investigate and resolve complaints made by, or on behalf of, residents. Specifically, ombudsman responsibilities outlined in Title VII of the OAA include:

- Identifying, investigating and resolving complaints made by or on behalf of residents;
- Providing information to residents about long-term care services;
- Representing the interests of residents before governmental agencies and seeking administrative, legal and other remedies to protect residents;
- Analyzing, commenting on and recommending changes in laws and regulations pertaining to the health, safety, welfare and rights of residents;
- Educating and informing consumers and the general public regarding issues and concerns related to long-term care and facilitate public comment on laws, regulations, policies and actions;
- Promoting the development of citizen organizations to participate in the program;
- Providing technical support for the development of resident and family councils to protect the well-being and rights of residents, and
- Advocating for changes to improve residents' quality of life and care.

In 2004, about 12,500 volunteers, 8,714 of whom were certified to investigate complaints and 1,180 paid ombudsmen, served in 580 localities nationwide. Ombudsmen investigated over 287,000 complaints made by 185,000 individuals and provided information on long-term care to

³ *NCEA Fact Sheet: Elder Abuse Prevalence and Incidence*, National Center on Elder Abuse, April 6, 2005. Found at <http://www.elderabusecenter.org/pdf/publication/FinalStatistics050331.pdf> (last visited on March 17, 2006)

another 337,000 people. The most frequent nursing home complaints involved lack of resident care due to inadequate staffing.⁴

Florida's Long-Term Care Ombudsman Program

Florida's long-term care ombudsman program is authorized under ss. 400.0061-400.0091, F.S. The program is housed in and administered by the Department of Elderly Affairs (DOEA). The program consists of the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, and 17 local long-term care ombudsman councils. Paid staffs at the state and local levels coordinate and support the work of certified volunteers. The program is supported with both federal and state funding.

The program is under the direction of the State Long-Term Care Ombudsman (the State Ombudsman), a position authorized by the OAA and s. 400.0063, F.S. The State Ombudsman is a DOEA employee who, pursuant to s. 400.0063(2)(b), F.S., is appointed by and serves at the pleasure of the Secretary of DOEA. The State Ombudsman is authorized to hire certain staff members to carry out the duties of her or his office. Volunteers throughout the state, who are organized into local ombudsman councils, carry out the investigation and complaint resolution duties of the program. Each local council elects one member to sit on the State Long-Term Care Ombudsman Council (state council). In addition to investigation and complaint resolution, the program:

- Monitors and comments on the development and implementation of federal, state and local laws, regulations, and policies that pertain to the health, safety and welfare of residents in long-term care facilities;
- Provides information to the public regarding long-term care facilities;
- Conducts inspections focusing on quality of life issues in each long-term care facility at least annually; and
- Provides assistance for the development of resident and family councils to protect the well-being of residents.

Anyone, including friends, family members, facility staff and residents themselves may report a concern on behalf of a resident of a long-term care facility, such as a nursing home, assisted living facility or adult family care home. There is no fee for the service and there are no financial or residency requirements.

Currently, Florida has more than 300 long-term care ombudsmen who dedicate their time and energy to advocate for the state's frailest elders. During FY 2004-05, the program inspected 2,908 facilities and investigated 7,985 complaints. Often, a single complaint may affect more than one resident; in fact, an entire wing or population of a long-term care facility may be affected. Based on this information, it is estimated that the program served approximately 61,802 long-term care facility residents in FY 2004-05 through complaint investigations. The ten most

⁴ *The Long-Term Care Ombudsman Program*, U.S. Department of Health and Human Services, Administration on Aging, November 2005. Found at http://www.aoa.dhhs.gov/press/fact/pdf/fs_ombudsman.pdf (last visited on March 17, 2006)

common complaints in assisted living facilities, adult family care homes, and nursing homes for FY 2004-05 are listed in the following tables.⁵

Table 1. Top Ten Complaints in Assisted Living Facilities and Adult Family Care Homes

Nature of Complaint	Number of Complaints
Medication administration	162
Menu – quantity, quality, variation	139
Shortage of staff	107
Billing/charges	85
Cleanliness – pests, housekeeping	78
Personal property – lost, stolen, destroyed	75
Dignity, respect	73
Equipment/building – disrepair, poor lighting, etc.	71
Personal funds – mismanaged, access denied, etc.	67
Discharge/eviction – planning, notice, procedure	65

Table 2. Top Ten Complaints in Nursing Homes

Nature of Complaint	Number of Complaints
Accidents; injuries; falls; improper handling	220
Discharge/eviction - planning, notice, procedure	214
Medication administration	212
Personal hygiene (including dental hygiene)	203
Call lights, requests for assistance	171
Personal property – lost, stolen, destroyed	169
Symptoms unattended	150
Dignity, respect	143
Staff attitudes	136
Toileting; incontinent care	133

Until the 2002 Session, DOEA only administratively housed the program and was unable to effectively provide direction to the program. However, the 2002 Legislature authorized a change to require DOEA to administer the program. These changes shifted administration activities to the department and its employees, centralized program policy development in the Office of State Long-Term Care Ombudsman, and enhanced the ability of program volunteers to spend more time advocating for the interests of long-term care facility residents.

III. Effect of Proposed Changes:

Section 1. Amends s. 400.0060, F.S., defining “administrative assessment” as a review of conditions in a long-term care facility that impact the rights, health, safety, and welfare of residents with the purpose of noting needed improvement and making recommendations to enhance the quality of life for residents; “department” as the Department of Elderly Affairs; “local council” as a local long-term care ombudsman council designated by the State Long-Term Care Ombudsman pursuant to s. 400.0069, F.S.; and “state council” as the State Long-Term Care Ombudsman Council created by s. 400.0067, F.S; and modifying other definitions.

⁵ Florida’s Long-Term Care Ombudsman Program: Annual Snapshot, 2004-2005, Department of Elder Affairs.

Section 2. Amends s. 400.0061, F.S., making technical and conforming changes to the legislative findings and intent regarding long-term care and the need for ombudsmen.

Section 3. Amends s. 400.0063, F.S., making technical changes to the provisions related to the State Long-Term Care Ombudsman; repealing the prohibition against a person who has a conflict of interest being involved with the designation of the State Long-Term Care Ombudsman; and modifying the duties of the legal advocate in the office to include pursuing administrative, legal, and other appropriate remedies on behalf of long-term care residents.

Section 4. Amends s. 400.0065, F.S., modifying the duties and responsibilities of the State Long-Term Care Ombudsman; requiring the office to administer, rather than provide administrative and technical assistance, to the local ombudsman councils; specifying that staff members of the ombudsman program are considered official representatives of the office upon certification of completed training; transferring and modifying the requirement for an annual report by the State Ombudsman describing activities carried out by the office, state council and local councils from s. 400.0067, F.S., which required the report to be conducted by the state council; and repealing the prohibition that a person with certain conflicts of interest may not be the State Long-Term Care Ombudsman.

Section 5. Repeals s. 400.0066, F.S., relating to the Department of Elderly Affairs' funding of the Office of State Long-Term Care Ombudsman.

Section 6. Amends s. 400.0067, F.S., revising duties, membership criteria, and procedures for the State Long-Term Care Ombudsman Council; repealing the requirement that the council prepare an annual report describing activities carried out by the Ombudsman office, state council and local councils; clarifying that a local council may recommend removal of its elected representative of the state council; and repealing the prohibition against a person who has a conflict of interest being a member of the state council.

Section 7. Amends s. 400.0069, F.S., revising duties, membership criteria, and procedures for local long-term care ombudsman councils; specifying that local councils function under the direction of the State Ombudsman; specifying that the State Ombudsman may create additional local councils; specifying that applications for membership on a local council must be submitted to and reviewed by the State Ombudsman for his or her recommendation to the Secretary; specifying a procedure for the removal of a local council member or chair; and repealing the prohibition against a person who has a conflict of interest being a member of a local council.

Section 8. Creates s. 400.0070, F.S., establishing a prohibition against employment and participation in the State Long-Term Care Ombudsman program if an individual has any conflicts of interest; and requiring the department to define by rule situations that constitute a conflict of interest.

Section 9. Amends s. 400.0071, F.S., requiring the department to adopt rules regarding procedures for receiving complaints, conducting investigations, and conducting onsite administrative assessments; and repealing a requirement that the complaint procedures be posted in full view in every nursing home or long-term care facility.

Section 10. Amends s. 400.0073, F.S., revising state and local ombudsman council investigative procedures; specifying that a facility administrator shall be considered to have interfered with an individual in performance of their official duties if the facility does not allow the State Ombudsman or any state or local council member to enter for an investigation; requiring the State Ombudsman to report this violation to the agency for administrative action under ch. 400, F.S.; and repealing the requirement that each local ombudsman council conduct an annual investigation of each nursing home and long-term care facility in its jurisdiction.

Section 11. Creates s. 400.0074, F.S., requiring each local ombudsman council to conduct an annual onsite administrative assessment of each nursing home, assisted living facility, and adult family-care home within its jurisdiction; specifying the components of an assessment; specifying the conditions and procedures for an onsite administrative assessment; and clarifying the distinction between the onsite administrative assessment and other regulatory inspections and investigations.

Section 12. Amends s. 400.0075, F.S., revising complaint notification and resolution procedures; and repealing the requirement that the State Ombudsman recommend to the agency changes in rules for inspecting, licensing, or certifying long-term care facilities.

Section 13. Amends s. 400.0078, F.S., revising citizen access to State Long-Term Care Ombudsman Program services and requiring each facility to provide ombudsman contact information to each resident upon admission.

Section 14. Amends s. 400.0079, F.S., making technical changes to reporter and ombudsman immunity.

Section 15. Amends s. 400.0081, F.S., making technical changes to the requirements for ombudsman access to facilities, residents, and records.

Section 16. Amends s. 400.0083, F.S., revising prohibitions against interference with ombudsman staff or council members conducting official business and retaliation against persons registering a complaint.

Section 17. Repeals s. 400.0085, F.S., relating to penalties for retaliation, which are incorporated into s. 400.0083, F.S.

Section 18. Amends s. 400.0087, F.S., specifying that the department provides funding for and conducts oversight of the ombudsman program.

Section 19. Amends s. 400.0089, F.S., making technical and conforming changes to complaint data reporting requirements.

Section 20. Amends s. 400.0091, F.S., revising training curriculum and requirements for ombudsman staff and state and local ombudsman council members; requiring the ombudsman to approve the curriculum for initial and continuing education; and adding resident confidentiality as a topic for training.

Section 21. Provides that the act is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

DOEA expects no fiscal impact from this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
