

By the Committee on Health Care; and Senator Peaden

587-1979-06

1 A bill to be entitled
 2 An act relating to the State Long-Term Care
 3 Ombudsman Program; amending s. 400.0060, F.S.;
 4 providing and revising definitions; amending s.
 5 400.0061, F.S.; revising legislative findings
 6 and intent; amending s. 400.0063, F.S.;
 7 revising provisions relating to qualifications
 8 of the State Long-Term Care Ombudsman; revising
 9 duties of the legal advocate; amending s.
 10 400.0065, F.S.; revising duties and
 11 responsibilities of the State Long-Term Care
 12 Ombudsman; requiring an annual report; deleting
 13 provisions relating to conflict of interest;
 14 repealing s. 400.0066, F.S., relating to the
 15 Office of State Long-Term Care Ombudsman and
 16 departments of state government; amending s.
 17 400.0067, F.S.; revising duties and membership
 18 of the State Long-Term Care Ombudsman Council;
 19 providing for election of a local council
 20 member from each local council to provide
 21 representation on the state council;
 22 authorizing the Secretary of Elderly Affairs to
 23 recommend to the Governor appointments for
 24 at-large positions on the state council;
 25 providing conditions for removal of members of
 26 and for filling vacancies on the state council;
 27 providing for election of officers and
 28 meetings; providing for per diem and travel
 29 expenses if approved by the ombudsman; deleting
 30 provisions relating to conflicts of interest
 31 and requests for appropriations; amending s.

1 400.0069, F.S.; authorizing the State Long-Term
2 Care Ombudsman to designate and direct local
3 long-term care ombudsman councils; requiring
4 approval by the Secretary of Elderly Affairs of
5 jurisdictional boundaries designated by the
6 ombudsman; revising duties of local long-term
7 care ombudsman councils; providing requirements
8 and application for membership, election of
9 officers, and meetings of local long-term care
10 ombudsman councils; providing conditions for
11 removal of members; providing for travel
12 expenses for members of the council; deleting
13 provisions relating to conflicts of interest;
14 creating s. 400.0070, F.S.; consolidating
15 provisions relating to conflicts of interest of
16 the ombudsman; providing rulemaking authority
17 to the Department of Elderly Affairs regarding
18 conflicts of interest; amending s. 400.0071,
19 F.S.; requiring rules for receiving,
20 investigating, and assessing complaints against
21 long-term care facilities; deleting provisions
22 requiring the posting and distribution of
23 copies of such procedures; amending s.
24 400.0073, F.S.; providing conditions for
25 investigations of complaints by state and local
26 ombudsman councils; providing that refusing to
27 allow the ombudsman or a member of a state or
28 local council to enter a long-term care
29 facility is a violation of ch. 400, F.S., under
30 certain circumstances; deleting conditions for
31 onsite administrative inspections; creating s.

1 400.0074, F.S.; providing conditions and
2 requirements for onsite administrative
3 assessments of nursing homes, assisted living
4 facilities, and adult family-care homes;
5 prohibiting forcible entry of long-term care
6 facilities; providing that refusing to allow
7 the ombudsman or a member of a state or local
8 council to enter a long-term care facility is a
9 violation of ch. 400, F.S., under certain
10 circumstances; amending s. 400.0075, F.S.;
11 providing complaint notification procedures for
12 state and local councils; providing
13 circumstances in which information relating to
14 violations by a long-term care facility is
15 provided to a local law enforcement agency;
16 amending s. 400.0078, F.S.; requiring
17 information relating to the State Long-Term
18 Care Ombudsman Program to be provided to
19 residents of long-term care facilities or their
20 representatives; amending s. 400.0079, F.S.;
21 providing for immunity from liability for
22 certain persons; amending s. 400.0081, F.S.;
23 requiring long-term care facilities to provide
24 the Office of State Long-Term Care Ombudsman
25 and state and local councils and their members
26 with access to the facility and the records and
27 residents of the facility; authorizing rather
28 than requiring the department to adopt rules
29 regarding access to facilities, records, and
30 residents; amending s. 400.0083, F.S.;
31 prohibiting certain actions against persons who

1 file complaints; providing penalties; repealing
2 s. 400.0085, F.S., relating to a penalty;
3 amending s. 400.0087, F.S.; providing for
4 oversight by and responsibilities of the
5 department; requiring the department to provide
6 certain funding for the State Long-Term Care
7 Ombudsman Program; amending s. 400.0089, F.S.;
8 requiring the office to maintain a data
9 reporting system relating to complaints about
10 and conditions in long-term care facilities and
11 to residents therein; requiring the office to
12 publish and include certain information in its
13 annual report; amending s. 400.0091, F.S.;
14 providing for training of employees of the
15 office and members of the state and local
16 councils; requiring the ombudsman to approve
17 the curriculum and providing contents thereof;
18 requiring certification of employees by the
19 ombudsman; providing an effective date.
20

21 Be It Enacted by the Legislature of the State of Florida:
22

23 Section 1. Section 400.0060, Florida Statutes, is
24 amended to read:

25 400.0060 Definitions.--When used in this part, unless
26 the context clearly dictates otherwise ~~requires~~, the term:

27 (1) "Administrative assessment" means a review of
28 conditions in a long-term care facility which impact the
29 rights, health, safety, and welfare of residents with the
30 purpose of noting needed improvement and making
31 recommendations to enhance the quality of life for residents.

1 ~~(2)~~~~(1)~~ "Agency" means the Agency for Health Care
2 Administration.

3 ~~(3)~~ "Department" means the Department of Elderly
4 Affairs.

5 ~~(4)~~ "Local council" means a local long-term care
6 ombudsman council designated by the ombudsman pursuant to s.
7 400.0069. Local councils are also known as district long-term
8 care ombudsman councils or district councils.

9 ~~(5)~~~~(2)~~ "Long-term care facility" means a ~~skilled~~
10 nursing home facility, ~~nursing facility~~, assisted living
11 facility, adult family-care home, board and care facility, or
12 any other similar residential adult care facility center.

13 ~~(6)~~~~(3)~~ "Office" means the Office of State Long-Term
14 Care Ombudsman created by s. 400.0063.

15 ~~(7)~~~~(4)~~ "Ombudsman" means the individual appointed by
16 the Secretary of Elderly Affairs ~~designated~~ to head the Office
17 of State Long-Term Care Ombudsman.

18 ~~(8)~~~~(5)~~ "Resident" means an individual 60 years of age
19 or older who resides in a long-term care facility.

20 ~~(9)~~~~(6)~~ "Secretary" means the Secretary of Elderly
21 Affairs.

22 ~~(10)~~ "State council" means the State Long-Term Care
23 Ombudsman Council created by s. 400.0067.

24 Section 2. Section 400.0061, Florida Statutes, is
25 amended to read:

26 400.0061 Legislative findings and intent; long-term
27 care facilities.--

28 (1) The Legislature finds that conditions in long-term
29 care facilities in this state are such that the rights,
30 health, safety, and welfare of residents are not fully ensured
31 by rules of the Department of Elderly Affairs or the Agency

1 for Health Care Administration, or by the good faith of owners
2 or operators of long-term care facilities. Furthermore, there
3 is a need for a formal mechanism whereby a long-term care
4 facility resident, a representative of a long-term care
5 facility resident, or any other concerned citizen ~~or his or~~
6 ~~her representative~~ may make a complaint against the facility
7 or its employees, or against other persons who are in a
8 position to restrict, interfere with, or threaten the rights,
9 health, safety, or welfare of a long-term care facility ~~the~~
10 resident. The Legislature finds that concerned citizens are
11 often more effective advocates for ~~of~~ the rights of others
12 than governmental agencies. The Legislature further finds that
13 in order to be eligible to receive an allotment of funds
14 authorized and appropriated under the federal Older Americans
15 Act, the state must establish and operate an Office of State
16 Long-Term Care Ombudsman, to be headed by the State Long-Term
17 Care Ombudsman, and carry out a long-term care ombudsman
18 program.

19 (2) It is the intent of the Legislature, therefore, to
20 utilize voluntary citizen ombudsman councils under the
21 leadership of the ombudsman, and through them to operate an
22 ombudsman program which shall, without interference by any
23 executive agency, undertake to discover, investigate, and
24 determine the presence of conditions or individuals which
25 constitute a threat to the rights, health, safety, or welfare
26 of the residents of long-term care facilities. To ensure that
27 the effectiveness and efficiency of such investigations are
28 not impeded by advance notice or delay, the Legislature
29 intends that the ombudsman and ombudsman councils and their
30 designated representatives not be required to obtain warrants
31 in order to enter into or conduct investigations or onsite

1 administrative ~~assessments inspections~~ of long-term care
2 facilities. It is the further intent of the Legislature that
3 the environment in long-term care facilities ~~shall~~ be
4 conducive to the dignity and independence of residents and
5 that investigations by ombudsman councils shall further the
6 enforcement of laws, rules, and regulations that safeguard the
7 health, safety, and welfare of residents.

8 Section 3. Section 400.0063, Florida Statutes, is
9 amended to read:

10 400.0063 Establishment of Office of State Long-Term
11 Care Ombudsman; designation of ombudsman and legal advocate.--

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

14 (2)(a) The Office of State Long-Term Care Ombudsman
15 shall be headed by the State Long-Term Care Ombudsman, who
16 shall ~~have expertise and experience in the fields of long term~~
17 ~~care and advocacy, who shall~~ serve on a full-time basis and
18 shall personally, or through representatives of the office,
19 carry out the purposes and functions of the office ~~of State~~
20 ~~Long Term Care Ombudsman~~ in accordance with state and federal
21 law.

22 (b) The ~~State Long Term Care~~ ombudsman shall be
23 appointed by and shall serve at the pleasure of the Secretary
24 of Elderly Affairs. The secretary shall appoint a person who
25 has expertise and experience in the fields of long-term care
26 and advocacy to serve as ombudsman. No person who has a
27 ~~conflict of interest, or has an immediate family member who~~
28 ~~has a conflict of interest, may be involved in the designation~~
29 ~~of the ombudsman.~~

30 (3)(a) There is created in the office ~~of State~~
31 ~~Long Term Care Ombudsman~~ the position of legal advocate, who

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

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

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

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

11 3. Pursuing administrative, initiating and prosecuting
12 legal, and other appropriate remedies on behalf of equitable
13 actions to enforce the rights of long term care facility
14 residents as defined in this chapter.

15 4. Serving as legal counsel to the state and local
16 ~~ombudsman~~ councils, or individual members thereof, against
17 whom any suit or other legal action is initiated in connection
18 with the performance of the official duties of the councils or
19 an individual member.

20 Section 4. Section 400.0065, Florida Statutes, is
21 amended to read:

22 400.0065 State Long-Term Care Ombudsman; duties and
23 responsibilities; ~~conflict of interest.~~--

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

26 (a) Identify, investigate, and resolve complaints made
27 by or on behalf of residents of long-term care facilities,
28 relating to actions or omissions by providers or
29 representatives of providers of long-term care services, other
30 public or private agencies, guardians, or representative
31

1 payees that may adversely affect the health, safety, welfare,
2 or rights of the residents.

3 (b) Provide services that ~~to~~ assist ~~residents~~ in
4 protecting the health, safety, welfare, and rights of ~~the~~
5 residents.

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

9 (d) Ensure that residents have regular and timely
10 access to the services provided through the office and that
11 residents and complainants receive timely responses from
12 representatives of the office to their complaints.

13 (e) Represent the interests of residents before
14 governmental agencies and seek administrative, legal, and
15 other remedies to protect the health, safety, welfare, and
16 rights of the residents.

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

19 (g) Analyze, comment on, and monitor the development
20 and implementation of federal, state, and local laws, rules,
21 and regulations, and other governmental policies and actions,
22 that pertain to the health, safety, welfare, and rights of the
23 residents, with respect to the adequacy of long-term care
24 facilities and services in the state, and recommend any
25 changes in such laws, rules, regulations, policies, and
26 actions as the office determines to be appropriate and
27 necessary.

28 (h) Provide technical support for the development of
29 resident and family councils to protect the well-being and
30 rights of residents.

31

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

3 (a) Establish and coordinate ~~Assist and support the~~
4 ~~efforts of the State Long Term Care Ombudsman Council in the~~
5 ~~establishment and coordination of local ombudsman~~ councils
6 throughout the state.

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

9 (c) Within the limits of appropriated federal and
10 state funding ~~authorized and appropriated~~, employ such
11 personnel, ~~including staff for local ombudsman councils~~, as
12 are necessary to perform adequately the functions of the
13 office and provide or contract for legal services to assist
14 the state and local ~~ombudsman~~ councils in the performance of
15 their duties. Staff positions established for the purpose of
16 coordinating the activities of ~~for~~ each local ~~ombudsman~~
17 council and assisting its members may be ~~established as career~~
18 ~~service positions~~, and shall be filled by the ombudsman after
19 approval by the secretary. Notwithstanding any other provision
20 of this part, upon certification by the ombudsman that the
21 staff member hired to fill any such position has completed the
22 initial training required under s. 400.0091, such person shall
23 be considered a representative of the State Long-Term Care
24 Ombudsman Program for purposes of this part.

25 (d) Contract for services necessary to carry out the
26 activities of the office.

27 (e) Apply for, receive, and accept grants, gifts, or
28 other payments, including, but not limited to, real property,
29 personal property, and services from a governmental entity or
30 other public or private entity or person, and make
31 arrangements for the use of such grants, gifts, or payments.

1 (f) Coordinate, to the greatest extent possible, state
2 and local ombudsman services with the protection and advocacy
3 systems for individuals with developmental disabilities and
4 mental illnesses and with legal assistance programs for the
5 poor through adoption of memoranda of understanding and other
6 means.

7 (g) Enter into a cooperative agreement with the
8 Statewide Advocacy Council ~~and district human rights advocacy~~
9 ~~committees~~ for the purpose of coordinating and avoiding
10 duplication of advocacy services provided to residents ~~of~~
11 ~~long term care facilities~~.

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

15 (i) Prepare an annual report describing the activities
16 carried out by the office, the state council, and the local
17 councils in the year for which the report is prepared. The
18 ombudsman shall submit the report to the secretary at least 30
19 days before the convening of the regular session of the
20 Legislature. The secretary shall in turn submit the report to
21 the United States Assistant Secretary for Aging, the Governor,
22 the President of the Senate, the Speaker of the House of
23 Representatives, the Secretary of Children and Family
24 Services, and the Secretary of Health Care Administration. The
25 report shall, at a minimum:

26 1. Contain and analyze data collected concerning
27 complaints about and conditions in long-term care facilities
28 and the disposition of such complaints.

29 2. Evaluate the problems experienced by residents.

30 3. Analyze the successes of the ombudsman program
31 during the preceding year, including an assessment of how

1 successfully the program has carried out its responsibilities
2 under the Older Americans Act.

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

9 5. Contain recommendations from the State Long-Term
10 Care Ombudsman Council regarding program functions and
11 activities and recommendations for policy, regulatory, and
12 statutory changes designed to protect residents' rights,
13 health, safety, and welfare.

14 6. Contain any relevant recommendations from the local
15 councils regarding program functions and activities.

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

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

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

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

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

31

1 Section 5. Section 400.0066, Florida Statutes, is
2 repealed.

3 Section 6. Section 400.0067, Florida Statutes, is
4 amended to read:

5 400.0067 State Long-Term Care Ombudsman Council;
6 duties; membership.--

7 (1) There is created within the Office of State
8 Long-Term Care Ombudsman, the State Long-Term Care Ombudsman
9 Council.

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

11 (a) Serve as an advisory body to assist the ombudsman
12 in reaching a consensus among local ~~ombudsman~~ councils on
13 issues affecting residents and impacting the optimal operation
14 of the program of statewide concern.

15 (b) Serve as an appellate body in receiving from the
16 local ~~ombudsman~~ councils complaints not resolved at the local
17 level. Any individual member or members of the state ~~ombudsman~~
18 council may enter any long-term care facility involved in an
19 appeal, pursuant to the conditions specified in s. 400.0074(2)
20 ~~400.0069(3).~~

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

28 (d) Assist the ombudsman in eliciting, receiving,
29 responding to, and resolving complaints made by or on behalf
30 of ~~long term care facility residents and in developing~~
31

1 ~~procedures relating to the receipt and resolution of such~~
2 ~~complaints. The secretary shall approve all such procedures.~~

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

6 (f) Assist the ombudsman in preparing the annual
7 report described in s. 400.0065. ~~Prepare an annual report~~
8 ~~describing the activities carried out by the ombudsman and the~~
9 ~~State Long Term Care Ombudsman Council in the year for which~~
10 ~~the report is prepared. The State Long Term Care Ombudsman~~
11 ~~Council shall submit the report to the Secretary of Elderly~~
12 ~~Affairs. The secretary shall in turn submit the report to the~~
13 ~~Commissioner of the United States Administration on Aging, the~~
14 ~~Governor, the President of the Senate, the Speaker of the~~
15 ~~House of Representatives, the minority leaders of the House~~
16 ~~and Senate, the chairpersons of appropriate House and Senate~~
17 ~~committees, the Secretary of Children and Family Services, and~~
18 ~~the Secretary of Health Care Administration. The report shall~~
19 ~~be submitted by the Secretary of Elderly Affairs at least 30~~
20 ~~days before the convening of the regular session of the~~
21 ~~Legislature and shall, at a minimum:~~

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

24 2. ~~Evaluate the problems experienced by residents of~~
25 ~~long term care facilities.~~

26 3. ~~Contain recommendations for improving the quality~~
27 ~~of life of the residents and for protecting the health,~~
28 ~~safety, welfare, and rights of the residents.~~

29 4. ~~Analyze the success of the ombudsman program during~~
30 ~~the preceding year and identify the barriers that prevent the~~
31 ~~optimal operation of the program. The report of the program's~~

1 ~~successes shall also address the relationship between the~~
2 ~~state long term care ombudsman program, the Department of~~
3 ~~Elderly Affairs, the Agency for Health Care Administration,~~
4 ~~and the Department of Children and Family Services, and an~~
5 ~~assessment of how successfully the state long term care~~
6 ~~ombudsman program has carried out its responsibilities under~~
7 ~~the Older Americans Act.~~

8 ~~5. Provide policy and regulatory and legislative~~
9 ~~recommendations to solve identified problems; resolve~~
10 ~~residents' complaints; improve the quality of care and life of~~
11 ~~the residents; protect the health, safety, welfare, and rights~~
12 ~~of the residents; and remove the barriers to the optimal~~
13 ~~operation of the state long term care ombudsman program.~~

14 ~~6. Contain recommendations from the local ombudsman~~
15 ~~councils regarding program functions and activities.~~

16 ~~7. Include a report on the activities of the legal~~
17 ~~advocate and other legal advocates acting on behalf of the~~
18 ~~local and state councils.~~

19 (3)(a) The State Long-Term Care Ombudsman Council
20 shall be composed of one active local council member elected
21 designated by each local council plus three at-large members
22 persons appointed by the Governor.

23 (a) Each local council shall elect by majority vote a
24 representative from among the council members to represent the
25 interests of the local council on the state council. A local
26 council chair may not serve as the representative of the local
27 council on the state council.

28 (b)1. The secretary, after consulting ombudsman, in
29 consultation with the ombudsman secretary, shall submit to the
30 Governor a list of persons recommended for appointment to the
31 at-large positions on the state council. The list shall not

1 include the name of any person who is currently at least eight
2 ~~names of persons who are not~~ serving on a local council.

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

6 3. If the Governor does not appoint an at-large member
7 to fill a vacant position ~~Governor's appointments are not made~~
8 within 60 days after ~~the ombudsman submits~~ the list is
9 submitted, the secretary, after consulting with the ombudsman,
10 ~~in consultation with the secretary,~~ shall appoint an at-large
11 member to fill that vacant position ~~three members, one of whom~~
12 ~~must be over 60 years of age.~~

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

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

17 3. A local council may recommend removal of its
18 elected representative from the state council by a majority
19 vote. If the council votes to remove its representative, the
20 local council chair shall immediately notify the ombudsman.
21 The secretary shall advise the Governor of the local council's
22 vote upon receiving notice from the ombudsman. Any vacancy
23 ~~shall be filled in the same manner as the original~~
24 ~~appointment.~~

25 4. The position of any member missing three state
26 council meetings within a 1-year period ~~consecutive regular~~
27 ~~meetings~~ without cause may ~~shall~~ be declared vacant by the
28 ombudsman. The findings of the ombudsman regarding cause shall
29 be final and binding.

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

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

5 2. The chair chairperson shall select a vice chair
6 chairperson from among the members. The vice chair chairperson
7 shall preside over the state council in the absence of the
8 chair chairperson.

9 3. The chair may create additional executive positions
10 as necessary to carry out the duties of the state council. Any
11 person appointed to an executive position shall serve at the
12 pleasure of the chair, and his or her term shall expire on the
13 same day as the term of the chair.

14 4. A chair may be immediately removed from office
15 prior to the expiration of his or her term by a vote of
16 two-thirds of all state council members present at any meeting
17 at which a quorum is present. If a chair is removed from
18 office prior to the expiration of his or her term, a
19 replacement chair shall be chosen during the same meeting in
20 the same manner as described in this paragraph, and the term
21 of the replacement chair shall begin immediately. The
22 replacement chair shall serve for the remainder of the term
23 and is eligible to serve two subsequent consecutive terms.

24 (e)1. The state ~~ombudsman~~ council shall meet upon the
25 call of the chair or upon the call of the ombudsman. The
26 council shall meet chairperson, at least quarterly but may
27 meet ~~or~~ more frequently as needed.

28 2. A quorum shall be considered present if more than
29 50 percent of all active state council members are in
30 attendance at the same meeting.

31

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

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

8 ~~(4) No officer, employee, or representative of the~~
9 ~~Office of State Long Term Care Ombudsman or of the State~~
10 ~~Long Term Care Ombudsman Council, nor any member of the~~
11 ~~immediate family of such officer, employee, or representative,~~
12 ~~may have a conflict of interest. The ombudsman shall adopt~~
13 ~~rules to identify and remove conflicts of interest.~~

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

17 Section 7. Section 400.0069, Florida Statutes, is
18 amended to read:

19 400.0069 Local long-term care ombudsman councils;
20 duties; membership.--

21 (1)(a) The ombudsman shall designate local long-term
22 care ombudsman councils to carry out the duties of the State
23 Long-Term Care Ombudsman Program within local communities.
24 Each local council shall function under the direction of the
25 ombudsman.

26 (b) The ombudsman shall ensure that there is There
27 ~~shall be~~ at least one local long term care ombudsman council
28 operating in each of the department's planning and service
29 ~~areas of the Department of Elderly Affairs, which shall~~
30 ~~function under the direction of the ombudsman and the state~~
31 ~~ombudsman council. The ombudsman may create additional local~~

1 councils as necessary to ensure that residents throughout the
2 state have adequate access to State Long-Term Care Ombudsman
3 Program services. The ombudsman, after approval from the
4 secretary, shall designate the jurisdictional boundaries of
5 each local council.

6 (2) The duties of the local councils ~~ombudsman council~~
7 are to:

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

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

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

19 (d) ~~To~~ Review and, if necessary, ~~to~~ comment on, ~~for~~
20 ~~their effect on the rights of long term care facility~~
21 ~~residents,~~ all existing or proposed rules, regulations, and
22 other governmental policies and actions relating to long-term
23 care facilities that may potentially have an effect on the
24 rights, health, safety, and welfare of residents.

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

29 (f) Recommend that the ombudsman and the legal
30 advocate ~~To represent the interests of residents before~~
31 ~~government agencies and to seek administrative, legal, and~~

1 other remedies to protect the health, safety, welfare, and
2 rights of the residents.

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

5 (3) In order to carry out the duties specified in
6 subsection (2), a member of a ~~the~~ local ~~ombudsman~~ council is
7 authorized, ~~pursuant to ss. 400.19(1) and 400.434,~~ to enter
8 any long-term care facility without notice or first obtaining
9 a warrant, subject to the provisions of s. 400.0074(2)
10 ~~400.0073(5)~~.

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

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

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

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

24 3. At least one licensed pharmacist;

25 4. At least one registered dietitian;

26 5. At least six nursing home residents or
27 representative consumer advocates for nursing home residents;

28 6. At least three residents of assisted living
29 facilities or adult family-care homes or three representative
30 consumer advocates for alternative long-term care facility
31 residents;

1 7. At least one attorney; and

2 8. At least one professional social worker.

3 **(b)** In no case shall the medical director of a
4 long-term care facility or an employee of the agency for
5 Health Care Administration, the department, the Department of
6 Children and Family Services, or the Agency for Persons with
7 Disabilities Department of Elderly Affairs serve as a member
8 or as an ex officio member of a council. Each member of the
9 council shall certify that neither the council member nor any
10 member of the council member's immediate family has any
11 conflict of interest pursuant to subsection (10). Local
12 ombudsman councils are encouraged to recruit council members
13 who are 60 years of age or older.

14 (5)(a) Individuals wishing to join a local council
15 shall submit an application to the ombudsman. The ombudsman
16 shall review the individual's application and advise the
17 secretary of his or her recommendation for approval or
18 disapproval of the candidate's membership on the local
19 council. If the secretary approves of the individual's
20 membership, the individual shall be appointed as a member of
21 the local council.

22 (b) The secretary may rescind the ombudsman's approval
23 of a member on a local council at any time. If the secretary
24 rescinds the approval of a member on a local council, the
25 ombudsman shall ensure that the individual is immediately
26 removed from the local council on which he or she serves and
27 the individual may no longer represent the State Long-Term
28 Care Ombudsman Program until the secretary provides his or her
29 approval.

30 (c) A local council may recommend the removal of one
31 or more of its members by submitting to the ombudsman a

1 resolution adopted by a two-thirds vote of the members of the
2 council stating the name of the member or members recommended
3 for removal and the reasons for the recommendation. If such a
4 recommendation is adopted by a local council, the local
5 council chair or district coordinator shall immediately report
6 the council's recommendation to the ombudsman. The ombudsman
7 shall review the recommendation of the local council and
8 advise the secretary of his or her recommendation regarding
9 removal of the council member or members. All members shall be
10 ~~appointed to serve 3 year terms. Upon expiration of a term and~~
11 ~~in case of any other vacancy, the council shall select a~~
12 ~~replacement by majority vote. The ombudsman shall review the~~
13 ~~selection of the council and recommend approval or disapproval~~
14 ~~to the Governor. If no action is taken by the Governor to~~
15 ~~approve or disapprove the replacement of a member within 30~~
16 ~~days after the ombudsman has notified the Governor of his or~~
17 ~~her recommendation, the replacement shall be considered~~
18 ~~disapproved and the process for selection of a replacement~~
19 ~~shall be repeated.~~

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

25 (b) The chair shall select a vice chair from among the
26 members of the council. The vice chair shall preside over the
27 council in the absence of the chair.

28 (c) The chair may create additional executive
29 positions as necessary to carry out the duties of the local
30 council. Any person appointed to an executive position shall
31

1 serve at the pleasure of the chair, and his or her term shall
2 expire on the same day as the term of the chair.

3 (d) A chair may be immediately removed from office
4 prior to the expiration of his or her term by a vote of
5 two-thirds of the members of the local council. If any chair
6 is removed from office prior to the expiration of his or her
7 term, a replacement chair shall be elected during the same
8 meeting, and the term of the replacement chair shall begin
9 immediately. The replacement chair shall serve for the
10 remainder of the term of the person he or she replaced.

11 (7) Each ~~The local ombudsman~~ council shall meet upon
12 the call of its ~~the~~ chair or upon the call of the ombudsman.
13 Each local council shall meet, ~~at least once a month but may~~
14 meet ~~or more frequently if necessary as needed to handle~~
15 emergency situations.

16 (8) A member of a local ~~ombudsman~~ council shall
17 receive no compensation but shall, with approval from the
18 ombudsman, be reimbursed for travel expenses both within and
19 outside the jurisdiction of the local council ~~county of~~
20 residence ~~in accordance with the provisions of s. 112.061.~~

21 (9) The local ~~ombudsman~~ councils are authorized to
22 call upon appropriate agencies of state government for such
23 professional assistance as may be needed in the discharge of
24 their duties. All state agencies shall cooperate with the
25 local ~~ombudsman~~ councils in providing requested information
26 and agency representation ~~representatives~~ at council meetings.

27 ~~(10) No officer, employee, or representative of a~~
28 ~~local long term care ombudsman council, nor any member of the~~
29 ~~immediate family of such officer, employee, or representative,~~
30 ~~may have a conflict of interest. The ombudsman shall adopt~~
31 ~~rules to identify and remove conflicts of interest.~~

1 Section 8. Section 400.0070, Florida Statutes, is
2 created to read:

3 400.0070 Conflicts of interest.--

4 (1) The ombudsman shall not:

5 (a) Have a direct involvement in the licensing or
6 certification of, or an ownership or investment interest in, a
7 long-term care facility or a provider of a long-term care
8 service.

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

11 (c) Receive, or have a right to receive, directly or
12 indirectly, remuneration, in cash or in kind, under a
13 compensation agreement with the owner or operator of a
14 long-term care facility.

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

18 (3) The department shall define by rule:

19 (a) Situations that constitute a person having a
20 conflict of interest that could materially affect the
21 objectivity or capacity of a person to serve on an ombudsman
22 council, or as an employee of the office, while carrying out
23 the purposes of the State Long-Term Care Ombudsman Program as
24 specified in this part.

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

28 Section 9. Section 400.0071, Florida Statutes, is
29 amended to read:

30 400.0071 State Long-Term Care Ombudsman Program
31 complaint procedures.--

1 ~~(1) The department state ombudsman council shall adopt~~
2 rules implementing recommend to the ombudsman and the
3 ~~secretary~~ state and local complaint procedures. The rules must
4 include procedures for:

5 (1) Receiving complaints against a nursing home or
6 long-term care facility or an its employee of a long-term care
7 facility.

8 (2) Conducting investigations of a long-term care
9 facility or an employee of a long-term care facility
10 subsequent to receiving a complaint.

11 (3) Conducting onsite administrative assessments of
12 long-term care facilities. The procedures shall be implemented
13 after the approval of the ombudsman and the secretary.

14 ~~(2) These procedures shall be posted in full view in~~
15 ~~every nursing home or long term care facility. Every resident~~
16 ~~or representative of a resident shall receive, upon admission~~
17 ~~to a nursing home or long term care facility, a printed copy~~
18 ~~of the procedures of the state and the local ombudsman~~
19 ~~councils.~~

20 Section 10. Section 400.0073, Florida Statutes, is
21 amended to read:

22 400.0073 State and local ombudsman council
23 investigations.--

24 (1) A local ~~ombudsman~~ council shall investigate,
25 within a reasonable time after a complaint is made, any
26 complaint of a resident, a ~~or~~ representative of a resident, or
27 any other credible source based on an action or omission by an
28 administrator, an ~~or~~ employee, or a representative of a
29 ~~nursing home or long-term care facility~~ which might be:

30 (a) Contrary to law;
31

1 (b) Unreasonable, unfair, oppressive, or unnecessarily
2 discriminatory, even though in accordance with law;~~;~~

3 (c) Based on a mistake of fact;~~;~~

4 (d) Based on improper or irrelevant grounds;~~;~~

5 (e) Unaccompanied by an adequate statement of
6 reasons;~~;~~

7 (f) Performed in an inefficient manner; ~~or~~

8 (g) Otherwise adversely affecting the health, safety,
9 welfare, or rights of a resident ~~erroneous.~~

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

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

16 (4) If the ombudsman or any state or local council
17 member is not allowed to enter a long-term care facility, the
18 administrator of the facility shall be considered to have
19 interfered with a representative of the office, the state
20 council, or the local council in the performance of official
21 duties as described in s. 400.0083(1) and to have committed a
22 violation of this part. The ombudsman shall report a
23 facility's refusal to allow entry to the agency, and the
24 agency shall record the report and take it into consideration
25 when determining actions allowable under s. 400.102, s.
26 400.121, s. 400.414, s. 400.419, s. 400.6194, or s. 400.6196.
27 ~~In addition to any specific investigation made pursuant to a~~
28 ~~complaint, the local ombudsman council shall conduct, at least~~
29 ~~annually, an investigation, which shall consist, in part, of~~
30 ~~an onsite administrative inspection, of each nursing home or~~
31 ~~long term care facility within its jurisdiction. This~~

1 ~~inspection shall focus on the rights, health, safety, and~~
2 ~~welfare of the residents.~~

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

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

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

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

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

21 ~~(e) Inspections may not unreasonably interfere with~~
22 ~~the programs and activities of clients within the facility.~~
23 ~~Ombudsman council members shall respect the rights of~~
24 ~~residents.~~

25 ~~(f) All inspections shall be limited to compliance~~
26 ~~with parts II, III, and VII of this chapter and 42 U.S.C. ss.~~
27 ~~1396(a) et seq., and any rules or regulations promulgated~~
28 ~~pursuant to such laws.~~

29 ~~(g) No ombudsman council member shall enter a~~
30 ~~single family residential unit within a long term care~~
31

1 ~~facility without the permission of the resident or the~~
2 ~~representative of the resident.~~

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

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

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

13 400.0074 Local ombudsman council onsite administrative
14 assessments.--

15 (1) In addition to any specific investigation
16 conducted pursuant to a complaint, the local council shall
17 conduct, at least annually, an onsite administrative
18 assessment of each nursing home, assisted living facility, and
19 adult family-care home within its jurisdiction. This
20 administrative assessment shall focus on factors affecting the
21 rights, health, safety, and welfare of the residents. Each
22 local council is encouraged to conduct a similar onsite
23 administrative assessment of each additional long-term care
24 facility within its jurisdiction.

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

27 (a) To the extent possible and reasonable, the
28 administrative assessments shall not duplicate the efforts of
29 the agency surveys and inspections conducted under parts II,
30 III, and VII of this chapter.

31

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

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

8 (d) A local council member physically present for the
9 administrative assessment shall identify himself or herself
10 and cite the specific statutory authority for his or her
11 assessment of the facility.

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

14 (f) A local council member may not enter a
15 single-family residential unit within a long-term care
16 facility during an administrative assessment without the
17 permission of the resident or the representative of the
18 resident.

19 (g) An administrative assessment must be conducted in
20 a manner that will impose no unreasonable burden on a
21 long-term care facility.

22 (3) Regardless of jurisdiction, the ombudsman may
23 authorize a state or local council member to assist another
24 local council to perform the administrative assessments
25 described in this section.

26 (4) An onsite administrative assessment may not be
27 accomplished by forcible entry. However, if the ombudsman or a
28 state or local council member is not allowed to enter a
29 long-term care facility, the administrator of the facility
30 shall be considered to have interfered with a representative
31 of the office, the state council, or the local council in the

1 performance of official duties as described in s. 400.0083(1)
2 and to have committed a violation of this part. The ombudsman
3 shall report the refusal by a facility to allow entry to the
4 agency, and the agency shall record the report and take it
5 into consideration when determining actions allowable under s.
6 400.102, s. 400.121, s. 400.414, s. 400.419, s. 400.6194, or
7 s. 400.6196.

8 Section 12. Section 400.0075, Florida Statutes, is
9 amended to read:

10 400.0075 Complaint notification and resolution
11 procedures.--

12 (1)(a) Any complaint ~~or, including any~~ problem
13 verified identified by an ombudsman council as a result of an
14 investigation or onsite administrative assessment, which
15 complaint or problem is determined to require, deemed valid
16 ~~and requiring~~ remedial action by the local ~~ombudsman~~ council,
17 shall be identified and brought to the attention of the
18 long-term care facility administrator in writing. Upon receipt
19 of such document, the administrator, ~~in concurrence~~ with the
20 concurrence of the local ombudsman council chair, shall
21 establish target dates for taking appropriate remedial action.
22 If, by the target date, the remedial action is not completed
23 or forthcoming, the local ~~ombudsman~~ council chair may, after
24 obtaining approval from the ombudsman and a majority of the
25 members of the local council:

26 1.(a) Extend the target date if the chair council has
27 reason to believe such action would facilitate the resolution
28 of the complaint.

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

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

3 **(b)** If the local council chair believes that the
4 health, safety, welfare, or rights of the resident are in
5 imminent danger, the chair shall notify the ombudsman or legal
6 advocate, who, after verifying that such imminent danger
7 exists, shall local long term care ombudsman council may seek
8 immediate legal or administrative remedies to protect the
9 resident.

10 **(c)** If the ombudsman has reason to believe that the
11 long-term care facility or an employee of the facility has
12 committed a criminal act, the ombudsman shall provide the
13 local law enforcement agency with the relevant information to
14 initiate an investigation of the case.

15 **(2)(a)** Upon referral from ~~a the~~ local ~~ombudsman~~
16 council, the state ~~ombudsman~~ council shall assume the
17 responsibility for the disposition of the complaint. If a
18 long-term care facility fails to take action on a complaint
19 ~~found valid~~ by the state ~~ombudsman~~ council, the state council
20 may, after obtaining approval from the ombudsman and a
21 majority of the state council members:

22 **1.(a)** In accordance with s. 400.0077, publicize the
23 complaint, the recommendations of the local or state council,
24 and the response of the long-term care facility.

25 **2.(b)** Recommend to the department and the agency a
26 series of facility reviews pursuant to s. 400.19~~(4)~~, s.
27 400.434, or s. 400.619 to ensure ~~assure~~ correction and
28 nonrecurrence of conditions that give rise to complaints
29 against a long-term care facility.

30 ~~(c)~~ ~~Recommend to the agency changes in rules for~~
31 ~~inspecting and licensing or certifying long term care~~

1 ~~facilities, and recommend to the Agency for Health Care~~
2 ~~Administration changes in rules for licensing and regulating~~
3 ~~long term care facilities.~~

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

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

11 4.(f) Recommend ~~to that~~ the department and the agency
12 that initiate procedures be initiated for revocation of the
13 long-term care facility's license in accordance with chapter
14 120.

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

18 (b) If the state council chair believes that the
19 health, safety, welfare, or rights of the resident are in
20 imminent danger, the chair shall notify the ombudsman or legal
21 advocate, who, after verifying that such imminent danger
22 exists, State Long Term Care Ombudsman Council shall seek
23 immediate legal or administrative remedies to protect the
24 resident.

25 (c) If the ombudsman has reason to believe that the
26 long-term care facility or an employee of the facility has
27 committed a criminal act, the ombudsman shall provide local
28 law enforcement with the relevant information to initiate an
29 investigation of the case.

30 ~~(3) The state ombudsman council shall provide, as part~~
31 ~~of its annual report required pursuant to s. 400.0067(2)(f),~~

1 ~~information relating to the disposition of all complaints to~~
2 ~~the Department of Elderly Affairs.~~

3 Section 13. Section 400.0078, Florida Statutes, is
4 amended to read:

5 400.0078 Citizen access to State Long-Term Care
6 Ombudsman Program services Statewide toll free telephone
7 number.--

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

12 (2) Every resident or representative of a resident
13 shall receive, upon admission to a long-term care facility,
14 information regarding the purpose of the State Long-Term Care
15 Ombudsman Program, the statewide toll-free telephone number
16 for receiving complaints, and other relevant information
17 regarding how to contact the program. Residents or their
18 representatives must be furnished additional copies of this
19 information upon request.

20 Section 14. Section 400.0079, Florida Statutes, is
21 amended to read:

22 400.0079 Immunity.--

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

28 (2) The ombudsman or any person authorized by the
29 ombudsman to act acting on behalf of the office, as well as
30 all members of State Long Term Care Ombudsman or the state and
31 ~~or a local~~ councils, long term care ombudsman council shall be

1 immune from any liability, civil or criminal, that otherwise
2 might be incurred or imposed~~7~~, during the good faith
3 performance of official duties.

4 Section 15. Section 400.0081, Florida Statutes, is
5 amended to read:

6 400.0081 Access to facilities, residents, and
7 records.--

8 (1) A long-term care facility shall provide the office
9 ~~of State Long Term Care Ombudsman~~, the state ~~Long Term Care~~
10 ~~Ombudsman~~ council and its members, and the local councils and
11 their members ~~long term care ombudsman councils, or their~~
12 ~~representatives, shall have~~ access to:

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

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

18 1. The office has the permission of the resident or
19 the legal representative of the resident; or

20 2. The resident is unable to consent to the review and
21 has no legal representative.

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

24 1. A legal representative or guardian of the resident
25 ~~refuses to give permission;~~

26 2. The office has reasonable cause to believe that the
27 representative or guardian is not acting in the best interests
28 ~~of the resident; and-~~

29 3. The state or local council member ~~representative~~
30 obtains the approval of the ombudsman.

31

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

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

7 ~~(2) Notwithstanding paragraph (1)(b), if, pursuant to~~
8 ~~a complaint investigation by the state ombudsman council or a~~
9 ~~local ombudsman council, the legal representative of the~~
10 ~~resident refuses to give permission for the release of the~~
11 ~~resident's records, and if the Office of State Long Term Care~~
12 ~~Ombudsman has reasonable cause to find that the legal~~
13 ~~representative is not acting in the best interests of the~~
14 ~~resident, the medical and social records of the resident must~~
15 ~~be made available to the state or local council as is~~
16 ~~necessary for the members of the council to investigate the~~
17 ~~complaint.~~

18 ~~(2)(3)~~ The department of ~~Elderly Affairs~~, in
19 consultation with the ombudsman and the state ~~Long Term Care~~
20 ~~Ombudsman~~ council, may ~~shall~~ adopt rules to establish
21 procedures to ensure access to facilities, residents, and
22 records as described in this section.

23 Section 16. Section 400.0083, Florida Statutes, is
24 amended to read:

25 400.0083 Interference; retaliation; penalties.--

26 (1) It shall be unlawful for any person, long-term
27 care facility, or other entity to willfully interfere with a
28 representative of the office of ~~State Long Term Care~~
29 ~~Ombudsman~~, the state ~~Long Term Care Ombudsman~~ council, or a
30 local ~~long term care ombudsman~~ council in the performance of
31 official duties.

1 (2) It shall be unlawful for any person, long-term
2 care facility, or other entity to knowingly or willfully take
3 action or retaliate against any resident, employee, or other
4 person for filing a complaint with, providing information to,
5 or otherwise cooperating with any representative of the office
6 ~~of State Long Term Care Ombudsman~~, the state ~~Long Term Care~~
7 ~~Ombudsman~~ council, or a local ~~long term care ombudsman~~
8 council.

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

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

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

16 Section 17. Section 400.0085, Florida Statutes, is
17 repealed.

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

20 400.0087 Department Agency oversight; funding.--

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

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

28 (b) The department may divert from the federal
29 ombudsman appropriation an amount equal to the department's
30 administrative cost ratio to cover the costs associated with
31 administering the program. The remaining allotment from the

1 Older Americans Act program shall be expended on direct
2 ombudsman activities.

3 ~~(2)(1) The department of Elderly Affairs shall monitor~~
4 the office, the state council, and the local ombudsman
5 councils to ensure that each is responsible for carrying out
6 the duties delegated to it by state ~~by s. 400.0069~~ and federal
7 law. ~~The department, in consultation with the ombudsman, shall~~
8 ~~adopt rules to establish the policies and procedures for the~~
9 ~~monitoring of local ombudsman councils.~~

10 ~~(3)(2) The department is responsible for ensuring that~~
11 the office:

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

14 ~~(b) of State Long Term Care Ombudsman~~ Provides
15 information to public and private agencies, legislators, and
16 others.;

17 (c) Provides appropriate training to representatives
18 of the office or of the state or local long term care
19 ombudsman councils.; and

20 (d) Coordinates ombudsman services with the Advocacy
21 Center for Persons with Disabilities and with providers of
22 legal services to residents of long-term care facilities in
23 compliance with state and federal laws.

24 ~~(4)(3) The department of Elderly Affairs is the~~
25 ~~designated state unit on aging for purposes of complying with~~
26 ~~the federal Older Americans Act. The Department of Elderly~~
27 ~~Affairs shall ensure that the ombudsman program has the~~
28 ~~objectivity and independence required to qualify it for~~
29 ~~funding under the federal Older Americans Act, and shall carry~~
30 ~~out the long term care ombudsman program through the Office of~~
31

1 ~~State Long Term Care Ombudsman. The Department of Elderly~~
2 ~~Affairs~~ shall also:

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

6 (b) Whenever necessary, act as liaison between
7 agencies and branches of the federal and state governments and
8 the State Long-Term Care Ombudsman Program representatives,
9 ~~the staffs of the state and local ombudsman councils, and~~
10 ~~members of the state and local ombudsman councils.~~

11 Section 19. Section 400.0089, Florida Statutes, is
12 amended to read:

13 400.0089 Complaint data Agency reports.--The office
14 ~~Department of Elderly Affairs~~ shall maintain a statewide
15 uniform reporting system to collect and analyze data relating
16 to complaints and conditions in long-term care facilities and
17 to residents, for the purpose of identifying and resolving
18 significant problems. ~~The department and the State Long Term~~
19 ~~Care Ombudsman Council shall submit such data as part of its~~
20 ~~annual report required pursuant to s. 400.0067(2)(f) to the~~
21 ~~Agency for Health Care Administration, the Department of~~
22 ~~Children and Family Services, the Florida Statewide Advocacy~~
23 ~~Council, the Advocacy Center for Persons with Disabilities,~~
24 ~~the Commissioner for the United States Administration on~~
25 ~~Aging, the National Ombudsman Resource Center, and any other~~
26 ~~state or federal entities that the ombudsman determines~~
27 ~~appropriate. The office State Long Term Care Ombudsman Council~~
28 shall publish quarterly and make readily available information
29 pertaining to the number and types of complaints received by
30 the State Long-Term Care Ombudsman Program and shall include
31

1 such information in the annual report required under s.
2 400.0065.

3 Section 20. Section 400.0091, Florida Statutes, is
4 amended to read:

5 400.0091 Training.--The ombudsman shall ensure that
6 ~~provide~~ appropriate training is provided to all employees of
7 the office ~~of State Long Term Care Ombudsman~~ and to the
8 members of the state and local ~~long term care ombudsman~~
9 ~~councils, including all unpaid volunteers.~~

10 (1) All state and local council members ~~volunteers~~ and
11 ~~appropriate~~ employees of the office shall ~~of State Long Term~~
12 ~~Care Ombudsman must~~ be given a minimum of 20 hours of training
13 upon employment with the office or approval ~~enrollment~~ as a
14 state or local council member ~~volunteer~~ and 10 hours of
15 continuing education annually thereafter.

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

19 (a) Resident confidentiality.

20 (b) Guardianships and powers of attorney.

21 (c) Medication administration.

22 (d) Care and medication of residents with dementia and
23 Alzheimer's disease.

24 (e) Accounting for residents' funds.

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

26 (g) Cultural sensitivity.

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

28 (3) No employee, officer, or representative of the
29 office or of the state or local ~~long term care ombudsman~~
30 councils, other than the ombudsman, may hold himself or
31 herself out as a representative of the State Long-Term Care

1 Ombudsman Program or conduct ~~carry out~~ any authorized program
2 ~~ombudsman~~ duty described in this part ~~or responsibility~~ unless
3 the person has received the training required by this section
4 and has been certified ~~approved~~ by the ombudsman as qualified
5 to carry out ombudsman activities on behalf of the office or
6 the state or local ~~long term care ombudsman~~ councils.

7 Section 21. This act shall take effect upon becoming a
8 law.

9
10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
11 COMMITTEE SUBSTITUTE FOR
12 Senate Bill 1922

13 The committee substitute defines "administrative assessment"
14 as a review of conditions in a long-term care facility that
15 impact the rights, health, safety, and welfare of residents
16 with the purpose of noting needed improvement and making
17 recommendations to enhance the quality of life for residents;
18 clarifies that ombudsmen will work with the Department of
19 Children and Family Services' Adult Protective Services
20 program; specifies that a local council can recommend their
21 representative be removed from the state council; allows an
22 ombudsman to obtain medical and social records to investigate
23 a complaint, contrary to the desire of a person's
24 representative or guardian's desires, if three specific
25 conditions are met; and requires the department to adopt rules
26 implementing procedures to investigate complaints and for
27 councils to conduct onsite administrative assessments of
28 long-term care facilities.
29
30
31