

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 2, between line(s) 16 and 17, 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, line(s) 2,

182 remove: all of said line

183 and insert:

184 An act relating to health and human services; amending s.

185 402.164, F.S.; establishing legislative intent for the statewide

186 and local advocacy councils; revising a definition; amending s.

187 402.165, F.S.; providing for termination of members of the

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188 | statewide council; providing guidelines for selection of the  
189 | executive director of the Florida Statewide Advocacy Council;  
190 | establishing a process for investigating reports of abuse;  
191 | revising council meeting requirements; providing requirements  
192 | for interagency agreements; requiring interagency agreements to  
193 | be renewed annually and submitted to the Governor by a specified  
194 | date; providing additional requirements for the statewide  
195 | council to petition the circuit court for access to certain  
196 | records;