

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Ausley offered the following:

2
3 **Amendment (with directory and title amendments)**

4 Remove lines 2352-2594 and insert:

5 (4) The department shall notify the Advocacy Center for
6 Persons with Disabilities, Inc., as to every report of death or
7 serious injury of a client of the department who is a child with
8 a disability within 48 hours after the department commences its
9 investigation. Notification shall include the name of the
10 alleged victim; the name of the alleged perpetrator; the
11 complete address, telephone number, and approximate age of each
12 subject of the investigation; a brief description of the abuse
13 or neglect, including physical, mental, or sexual injuries; a
14 description of the victim's disability; and the relationship of
15 the victim to the alleged perpetrator. For purposes of this
16 subsection, "serious injury" means an emergency medical

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17 condition as defined in s. 395.002(8) or an injury to an
18 individual that requires emergency services and care as defined
19 in s. 395.002(9) or admission to an ambulatory surgical center
20 as defined in s. 395.002(3) or a hospital as defined in s.
21 395.002(12) Florida local advocacy council in the appropriate
22 district of the department as to every report of institutional
23 child abuse, abandonment, or neglect in the district in which a
24 client of the department is alleged or shown to have been
25 abused, abandoned, or neglected, which notification shall be
26 made within 48 hours after the department commences its
27 investigation.

28 Section 20. Paragraph (v) of subsection (1) of section
29 215.22, Florida Statutes, is redesignated as paragraph (u), and
30 present paragraph (u) of that subsection is amended to read:

31 215.22 Certain income and certain trust funds exempt.--

32 (1) The following income of a revenue nature or the
33 following trust funds shall be exempt from the appropriation
34 required by s. 215.20(1):

35 ~~(u) The Florida Center for Nursing Trust Fund.~~

36 Section 21. Paragraph (c) of subsection (5) and subsection
37 (12) of section 394.459, Florida Statutes, are amended to read:

38 394.459 Rights of patients.--

39 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

40 (c) Each facility must permit immediate access to any
41 patient, subject to the patient's right to deny or withdraw
42 consent at any time, by the patient's family members, guardian,
43 guardian advocate, representative, ~~Florida statewide or local~~
44 ~~advocacy council~~, or attorney, unless such access would be

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45 detrimental to the patient. If a patient's right to communicate
46 or to receive visitors is restricted by the facility, written
47 notice of such restriction and the reasons for the restriction
48 shall be served on the patient, the patient's attorney, and the
49 patient's guardian, guardian advocate, or representative; and
50 such restriction shall be recorded on the patient's clinical
51 record with the reasons therefor. The restriction of a patient's
52 right to communicate or to receive visitors shall be reviewed at
53 least every 7 days. The right to communicate or receive visitors
54 shall not be restricted as a means of punishment. Nothing in
55 this paragraph shall be construed to limit the provisions of
56 paragraph (d).

57 (12) POSTING OF NOTICE OF RIGHTS OF PATIENTS.--Each
58 facility shall post a notice listing and describing, in the
59 language and terminology that the persons to whom the notice is
60 addressed can understand, the rights provided in this section.
61 This notice shall include a statement that provisions of the
62 federal Americans with Disabilities Act apply and the name and
63 telephone number of a person to contact for further information.
64 This notice shall be posted in a place readily accessible to
65 patients and in a format easily seen by patients. This notice
66 shall include the telephone number ~~numbers~~ of the ~~Florida local~~
67 ~~advocacy council~~ and Advocacy Center for Persons with
68 Disabilities, Inc.

69 Section 22. Paragraph (d) of subsection (2) of section
70 394.4597, Florida Statutes, is amended to read:

71 394.4597 Persons to be notified; patient's
72 representative.--

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73 (2) INVOLUNTARY PATIENTS.--

74 (d) When the receiving or treatment facility selects a
75 representative, first preference shall be given to a health care
76 surrogate, if one has been previously selected by the patient.
77 If the patient has not previously selected a health care
78 surrogate, the selection, except for good cause documented in
79 the patient's clinical record, shall be made from the following
80 list in the order of listing:

- 81 1. The patient's spouse.
- 82 2. An adult child of the patient.
- 83 3. A parent of the patient.
- 84 4. The adult next of kin of the patient.
- 85 5. An adult friend of the patient.
- 86 ~~6. The appropriate Florida local advocacy council as~~
87 ~~provided in s. 402.166.~~

88 Section 23. Subsection (1) of section 394.4598, Florida
89 Statutes, is amended to read:

90 394.4598 Guardian advocate.--

91 (1) The administrator may petition the court for the
92 appointment of a guardian advocate based upon the opinion of a
93 psychiatrist that the patient is incompetent to consent to
94 treatment. If the court finds that a patient is incompetent to
95 consent to treatment and has not been adjudicated incapacitated
96 and a guardian with the authority to consent to mental health
97 treatment appointed, it shall appoint a guardian advocate. The
98 patient has the right to have an attorney represent him or her
99 at the hearing. If the person is indigent, the court shall
100 appoint the office of the public defender to represent him or

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101 her at the hearing. The patient has the right to testify, cross-
102 examine witnesses, and present witnesses. The proceeding shall
103 be recorded either electronically or stenographically, and
104 testimony shall be provided under oath. One of the professionals
105 authorized to give an opinion in support of a petition for
106 involuntary placement, as described in s. 394.4655 or s.
107 394.467, must testify. A guardian advocate must meet the
108 qualifications of a guardian contained in part IV of chapter
109 744, except that a professional referred to in this part, an
110 employee of the facility providing direct services to the
111 patient under this part, a departmental employee, or a facility
112 administrator, ~~or member of the Florida local advocacy council~~
113 shall not be appointed. A person who is appointed as a guardian
114 advocate must agree to the appointment.

115 Section 24. Paragraph (b) of subsection (2) of section
116 394.4599, Florida Statutes, is amended to read:

117 394.4599 Notice.--

118 (2) INVOLUNTARY PATIENTS.--

119 (b) A receiving facility shall give prompt notice of the
120 whereabouts of a patient who is being involuntarily held for
121 examination, by telephone or in person within 24 hours after the
122 patient's arrival at the facility, unless the patient requests
123 that no notification be made. Contact attempts shall be
124 documented in the patient's clinical record and shall begin as
125 soon as reasonably possible after the patient's arrival. ~~Notice~~
126 ~~that a patient is being admitted as an involuntary patient shall~~
127 ~~be given to the Florida local advocacy council no later than the~~
128 ~~next working day after the patient is admitted.~~

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129 Section 25. Subsection (5) of section 394.4615, Florida
130 Statutes, is amended to read:

131 394.4615 Clinical records; confidentiality.--

132 (5) Information from clinical records may be used by the
133 Agency for Health Care Administration and the department, ~~and~~
134 ~~the Florida advocacy councils~~ for the purpose of monitoring
135 facility activity and complaints concerning facilities.

136 Section 26. Paragraphs (h) and (i) of subsection (2) of
137 section 400.0065, Florida Statutes, are redesignated as
138 paragraphs (g) and (h), respectively, and present paragraph (g)
139 of that subsection is amended to read:

140 400.0065 State Long-Term Care Ombudsman; duties and
141 responsibilities.--

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

144 ~~(g) Enter into a cooperative agreement with the Statewide~~
145 ~~Advocacy Council for the purpose of coordinating and avoiding~~
146 ~~duplication of advocacy services provided to residents.~~

147 Section 27. Paragraph (a) of subsection (2) of section
148 400.118, Florida Statutes, is amended to read:

149 400.118 Quality assurance; early warning system;
150 monitoring; rapid response teams.--

151 (2) (a) The agency shall establish within each district
152 office one or more quality-of-care monitors, based on the number
153 of nursing facilities in the district, to monitor all nursing
154 facilities in the district on a regular, unannounced, aperiodic
155 basis, including nights, evenings, weekends, and holidays.

156 Quality-of-care monitors shall visit each nursing facility at
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157 | least quarterly. Priority for additional monitoring visits shall
158 | be given to nursing facilities with a history of resident care
159 | deficiencies. Quality-of-care monitors shall be registered
160 | nurses who are trained and experienced in nursing facility
161 | regulation, standards of practice in long-term care, and
162 | evaluation of patient care. Individuals in these positions shall
163 | not be deployed by the agency as a part of the district survey
164 | team in the conduct of routine, scheduled surveys, but shall
165 | function solely and independently as quality-of-care monitors.
166 | Quality-of-care monitors shall assess the overall quality of
167 | life in the nursing facility and shall assess specific
168 | conditions in the facility directly related to resident care,
169 | including the operations of internal quality improvement and
170 | risk management programs and adverse incident reports. The
171 | quality-of-care monitor shall include in an assessment visit
172 | observation of the care and services rendered to residents and
173 | formal and informal interviews with residents, family members,
174 | facility staff, resident guests, volunteers, other regulatory
175 | staff, and representatives of a long-term care ombudsman council
176 | ~~or Florida advocacy council.~~

177 | Section 28. Subsections (13) and (20) of section 400.141,
178 | Florida Statutes, are amended to read:

179 | 400.141 Administration and management of nursing home
180 | facilities.--Every licensed facility shall comply with all
181 | applicable standards and rules of the agency and shall:

182 | (13) Publicly display a poster provided by the agency
183 | containing the names, addresses, and telephone numbers for the
184 | state's abuse hotline, the State Long-Term Care Ombudsman, the
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185 Agency for Health Care Administration consumer hotline, the
186 Advocacy Center for Persons with Disabilities, ~~the Florida~~
187 ~~Statewide Advocacy Council~~, and the Medicaid Fraud Control Unit,
188 with a clear description of the assistance to be expected from
189 each.

190 (20) Maintain general and professional liability insurance
191 coverage that is in force at all times. ~~In lieu of general and~~
192 ~~professional liability insurance coverage, a state designated~~
193 ~~teaching nursing home and its affiliated assisted living~~
194 ~~facilities created under s. 430.80 may demonstrate proof of~~
195 ~~financial responsibility as provided in s. 430.80(3)(h).~~

196
197 Facilities that have been awarded a Gold Seal under the program
198 established in s. 400.235 may develop a plan to provide
199 certified nursing assistant training as prescribed by federal
200 regulations and state rules and may apply to the agency for
201 approval of their program.

202 Section 29. Paragraph (a) of subsection (1) of section
203 415.1034, Florida Statutes, is amended to read:

204 415.1034 Mandatory reporting of abuse, neglect, or
205 exploitation of vulnerable adults; mandatory reports of death.--

206 (1) MANDATORY REPORTING.--

207 (a) Any person, including, but not limited to, any:

208 1. Physician, osteopathic physician, medical examiner,
209 chiropractic physician, nurse, paramedic, emergency medical
210 technician, or hospital personnel engaged in the admission,
211 examination, care, or treatment of vulnerable adults;

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212 2. Health professional or mental health professional other
213 than one listed in subparagraph 1.;

214 3. Practitioner who relies solely on spiritual means for
215 healing;

216 4. Nursing home staff; assisted living facility staff;
217 adult day care center staff; adult family-care home staff;
218 social worker; or other professional adult care, residential, or
219 institutional staff;

220 5. State, county, or municipal criminal justice employee
221 or law enforcement officer;

222 6. An employee of the Department of Business and
223 Professional Regulation conducting inspections of public lodging
224 establishments under s. 509.032;

225 7. ~~Florida advocacy council member or~~ Long-term care
226 ombudsman council member; or

227 8. Bank, savings and loan, or credit union officer,
228 trustee, or employee,

229
230 who knows, or has reasonable cause to suspect, that a vulnerable
231 adult has been or is being abused, neglected, or exploited shall
232 immediately report such knowledge or suspicion to the central
233 abuse hotline.

234 Section 30. Subsection (1) of section 415.104, Florida
235 Statutes, is amended to read:

236 415.104 Protective investigations of cases of abuse,
237 neglect, or exploitation of vulnerable adults; transmittal of
238 records to state attorney.--

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239 (1) (a) The department shall, upon receipt of a report
240 alleging abuse, neglect, or exploitation of a vulnerable adult,
241 begin within 24 hours a protective investigation of the facts
242 alleged therein. If a caregiver refuses to allow the department
243 to begin a protective investigation or interferes with the
244 conduct of such an investigation, the appropriate law
245 enforcement agency shall be contacted for assistance. If, during
246 the course of the investigation, the department has reason to
247 believe that the abuse, neglect, or exploitation is perpetrated
248 by a second party, the appropriate law enforcement agency and
249 state attorney shall be orally notified. The department and the
250 law enforcement agency shall cooperate to allow the criminal
251 investigation to proceed concurrently with, and not be hindered
252 by, the protective investigation. The department shall make a
253 preliminary written report to the law enforcement agencies
254 within 5 working days after the oral report. The department
255 shall, within 24 hours after receipt of the report, notify the
256 ~~appropriate Florida local advocacy council, or~~ long-term care
257 ombudsman council, when appropriate, that an alleged abuse,
258 neglect, or exploitation perpetrated by a second party has
259 occurred. Notice to the ~~Florida local advocacy council or~~ long-
260 term care ombudsman council may be accomplished orally or in
261 writing and shall include the name and location of the
262 vulnerable adult alleged to have been abused, neglected, or
263 exploited and the nature of the report.

264 (b) The department shall notify the Advocacy Center for
265 Persons with Disabilities, Inc., as to every report of death or
266 serious injury of a vulnerable adult that occurs in or at a

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267 facility, program, or service that is operated, licensed, or
 268 monitored by the Agency for Persons with Disabilities, the
 269 Department of Children and Family Services, or the Agency for
 270 Health Care Administration within 48 hours after the department
 271 commences its investigation. Notification shall include the name
 272 of the alleged victim; the name of the alleged perpetrator; the
 273 complete address, telephone number, and approximate age of each
 274 subject of the investigation; a brief description of the abuse
 275 or neglect, including physical, mental, or sexual injuries; a
 276 description of the victim's disability or infirmity; and the
 277 relationship of the victim to the alleged perpetrator. For
 278 purposes of this paragraph, "serious injury" means an emergency
 279 medical condition as defined in s. 395.002(8) or an injury to an
 280 individual that requires emergency services and care as defined
 281 in s. 395.002(9) or admission to an ambulatory surgical center
 282 as defined in s. 395.002(3) or a hospital as defined in s.
 283 395.002(12).

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 287 -----
 288 **D I R E C T O R Y A M E N D M E N T**

289 Remove lines 2346-2348 and insert:

290 Section 19. Subsection (4) of section 39.302, Florida
 291 Statutes, is

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

Remove lines 106-109 and insert:

Florida Center for Nursing Trust Fund; amending s. 39.302, F.S.; requiring the Department of Children and Family Services to provide notice to the Advocacy Center for Persons with Disabilities, Inc., of reports of death or serious injury of a client of the department who is a child with a disability within a specified timeframe; providing for contents of the notice; defining the term "serious injury"; amending s. 415.104, F.S.; conforming provisions to changes made by the act; requiring the Department of Children and Family Services to provide notice to the Advocacy Center for Persons with Disabilities, Inc., of reports of death or serious injury of a vulnerable adult that occurs in a facility, program, or service operated, licensed, or monitored by the Agency for Persons with Disabilities, the Department of Children and Family Services, or the Agency for Health Care Administration within a specified timeframe; providing for contents of the notice; defining the term "serious injury"; amending ss. 39.001, 39.0011, 39.202, 215.22, 394.459, 394.4597, 394.4598, 394.4599, 394.4615, 400.0065, 400.118, 400.141, 415.1034, 415.1055, 415.106, 415.107,