

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1171 Long-Term Care Ombudsman Program

SPONSOR(S): Health & Human Services Access Subcommittee; Harrison and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1658

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	13 Y, 1 N, As CS	Guzzo	Schoolfield
2) Health & Human Services Committee			

SUMMARY ANALYSIS

Committee Substitute for House Bill 1171 removes the requirement that local long-term care ombudsman councils conduct annual onsite administrative assessments of nursing homes, assisted living facilities, and adult family-care homes. The bill replaces the annual onsite administrative assessment requirement with a "resident-focused" assessment.

Section 400.0069(2), F.S., contains the duties of local long-term care ombudsman councils. The bill creates the following new duties for the local councils:

- Ensure that residents have regular, timely access to the ombudsman through visitations and that residents receive timely responses to their complaints.
- Provide technical support for the development of resident and family councils to protect the well-being and rights of residents.

The bill amends s. 400.0071, F.S., relating to complaint procedures for the State Long-Term Care Ombudsman Program. Currently, this section of statute does not include language describing the source of complaints. The bill clarifies that the procedures for receiving complaints and conducting complaint investigations are to result from complaints made by or on behalf of long-term care facility residents.

The bill repeals s. 400.0089, F.S., which requires the Office of State Long-Term Care Ombudsman to maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities in an effort to identify and resolve significant problems.

The bill removes language in s. 400.19, F.S., requiring the Agency for Health Care Administration (AHCA) to conduct onsite reviews of nursing homes following written verification of licensee non compliance by the Long-Term Care Ombudsman Council.

Section 400.235, F.S., requires facilities to meet certain additional criteria to be recognized as a Gold Seal Program Facility. The bill removes the requirement for a facility to demonstrate evidence of an outstanding record regarding the number and types of substantiated complaints reported to the state long-term care ombudsman council within 30 months preceding application.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Office of State Long-Term Care Ombudsman (Office) is created by s. 400.0063, F.S., and is headed by the State Long-Term Care Ombudsman, appointed by the Secretary of the Department of Elder Affairs (DOEA). The ombudsman designates local long-term care ombudsman councils to carry out the duties of the State Long-Term Care Ombudsman Program (Program) within local communities. There must be at least one local council operating in each of DOEA's planning and service areas.

Local Councils

Duties of the local councils include:¹

- Serving as a third-party mechanism for protecting the health, safety, welfare, and civil and human rights of residents;
- Discovering, investigating, and determining the existence of abuse or neglect in any long-term care facility;
- Eliciting, receiving, investigating, responding to, and resolving complaints made by or on behalf of residents;
- Reviewing and commenting on all existing or proposed rules, regulations, and other governmental policies and actions relating to long-term care facilities that may potentially have an effect on the rights, health, safety, and welfare of residents;
- Reviewing personal property and money accounts of residents who are receiving assistance under the Medicaid program pursuant to an investigation to obtain information regarding a specific complaint or problem;
- Recommending that the ombudsman and the legal advocate seek administrative, legal, and other remedies to protect residents;
- Carrying out activities that the ombudsman determines to be appropriate.

State Long-Term Care Ombudsman Council

The State Long-Term Care Ombudsman Council is created within the office by s. 400.0067, F.S. The council serves an advisory body to assist the ombudsman in reaching a consensus among local councils on issues affecting and impacting the operation of the program. The council also serves as an appellate body in receiving complaints from local councils that are unresolved at the local level. In addition, the council helps the ombudsman discover, investigate, and determine the existence of abuse or neglect in any long-term care facility.²

Complaint Procedures

Section 400.0071, F.S., provides complaint procedures for the program, and rule making authority to DOEA. The rules must include procedures for receiving complaints against, and conducting investigations of a long-term care facility or an employee of a long-term care facility.

Administrative Assessments

Currently, s. 400.0074, F.S., requires the council to conduct onsite administrative assessments of nursing homes, assisted living facilities (ALFs), and adult family care homes at least annually. The

¹ S. 400.0069(1), F.S. (2010)

² S. 400.0067(2), F.S. (2010)

council also identifies, investigates and resolves complaints made by, or on behalf of, residents of long-term care facilities. Members of a local council are authorized to enter any long-term care facility without notice or first obtaining a warrant. The Agency for Health Care Administration (AHCA) conducts routine licensure and complaint surveys of nursing homes, ALFs, and adult day care homes. The Center's for Medicare and Medicaid Services (CMS) State Operations Manual for nursing homes' investigative protocol requires AHCA, as part of its survey process, to perform offsite survey preparation. This preparation includes review of information about the facility prior to the survey. One of the sources of this information is the ombudsman. The ombudsman can contribute information in the areas of resident rights, review of clinical records, transfer and discharge, access and visitation, and admission and involvement in care planning. This information is taken into consideration as the survey team identifies areas to focus its review to determine facility compliance.

Access to Facilities, Residents, and Records

Section 400.0081, F.S., requires long-term care facilities to provide the office, council, and the local councils to provide access to any portion of the facility, any resident, and medical and social records of a resident as necessary to investigate or resolve a complaint. Facilities must also provide access to administrative records, policies, and documents that are accessible to residents and the general public. Upon request, facilities must provide copies of all licensing and certification records maintained by the state with respect to a facility.

Complaint Data Reports

Complaint data reports are utilized to identify and resolve significant problems. Section 400.0089, F.S., requires the office to maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities. This section also requires the office to publish information quarterly, relating to the number and types of complaints received by the program. The information is required to be included in the annual report required under s. 400.0065, F.S.

Right of Entry and Inspection

Section 400.19, F.S., provides the authority to AHCA, and members of the council or local council to enter facilities in order to determine compliance with part II of chapter 400, F.S. AHCA is required to complete its investigation and provide its findings to the resident within 60 days after receipt of a complaint. Section 400.19(4), F.S., requires AHCA to conduct unannounced onsite facility reviews following written verification of licensee noncompliance when the council receives a complaint and has documented deficiencies in resident care or in the physical plant of the facility that threaten the health, safety, or security of residents.

Gold Seal Program

Section 400.235, F.S., contains provisions of the Gold Seal Program as it relates to nursing home quality and licensure status. The Governor's Panel on Excellence in Long-term Care (Panel) developed and implemented the Gold Seal Program. The Gold Seal Program was created in 2002 to award and recognize nursing home facilities that demonstrate excellence in long-term care over a sustained period of time. Section 400.235(3)(a), F.S., provides the composition of the panel is to consist of individuals appointed by the Governor's Office, AHCA, the Department of Health, DOEA, Florida Association of Homes for the Aging, Florida Health Care Association, Florida Life Care residents Association and the State Long Term-Care Ombudsman. As of January 1, 2011, there were 675 licensed nursing homes in Florida.³ Of the 675 facilities, 19 facilities are currently designated as a Gold Seal Facility.⁴ There have been a total of 35 facilities that have received the Gold Seal Award designation, since the program was created in 2002.⁵

³ AHCA, *Staff Analysis and Economic Impact, House Bill Number 1171* (March 18, 2011).

⁴ Id.

⁵ Id.

Section 400.235(4), F.S., requires the panel to consider the quality of care provided to residents when evaluating a facility for the Gold Seal Program, and determine the procedures for measuring the quality of care. There are two annual review periods when nursing home facilities can apply for the Gold Seal award designation. The required criteria to be recognized as a Gold Seal Program facility is provided in s. 400.235, F.S., and Rule 59A-4.201-206, F.A.C. One of the requirements is that facilities must display evidence of an outstanding record regarding the number and types of substantiated complaints reported to the Ombudsman Council within the 30 months preceding submission of an application.

Effects of the Bill

The bill amends s. 400.0074, F.S., which requires local long-term care ombudsman councils to conduct administrative assessments of nursing homes, ALFs and adult family care homes. Currently, the Ombudsman council is required to conduct onsite administrative assessments of these facilities, at least annually, to review the conditions that impact the rights, health, safety, and welfare of facility residents. The bill removes this requirement and all language referencing “onsite administrative assessments” and replaces it with a new “resident focused” assessment. This revision will allow the ombudsman to focus on the facility residents rather than the facility itself. AHCA’s responsibility to use information from the ombudsman remains intact because of its duty to act as the State Agency having oversight of these long-term care facilities. The development of a resident focused assessment process will be completed by a workgroup of one representative from each of the following organizations:

- The State Long-Term Care Ombudsman;
- The State Long-Term Care Ombudsman Council;
- The Local Council;
- The Florida Health Care Association;
- The Florida Association of Homes and Services for the Aging;
- The Florida Assisted Living Association; and
- The Executive Office of the Governor.

Section 400.0069(2), F.S., contains the duties of local long-term care ombudsman councils. The bill creates the following new duties for the local councils:

- Ensure that residents have regular, timely access to the ombudsman through visitations and that residents receive timely responses to their complaints.
- Provide technical support for the development of resident and family councils to protect the well-being and rights of residents.

The bill amends s. 400.0071, F.S., relating to complaint procedures for the long-term care ombudsman program. Currently, this section of statute does not include language describing the source of the complaint. The bill clarifies that the procedures for receiving complaints and conducting complaint investigations are to result from complaints made by or on behalf of long-term care facility residents.

The bill repeals s. 400.0089, F.S., which requires the Office of State Long-Term Care Ombudsman to maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities and to publish quarterly the information related to complaints.

The bill removes language in s. 400.19, F.S., which pertains to one of the conditions requiring AHCA to conduct onsite reviews of nursing homes. The condition is a written verification of a complaint by the ombudsman council related to deficiencies in residents care or the physical plant of the facility that threatens the health safety or security of residents. AHCA reports that the removal of this language will not affect AHCA’s survey process or reduce its ability to regulate facilities to ensure the health, safety or security of residents.⁶ The ombudsman council will continue to be able to file complaints with AHCA’s complaint administration unit if they have concerns while visiting a facility.

⁶ Id.

Finally, the bill amends s. 400.235, F.S., relating to the Gold Seal Facility Program, to remove the requirement for a facility to demonstrate evidence of an outstanding record regarding the number and types of substantiated complaints reported to the ombudsman council within 30 months preceding their application. All of the Gold Seal criteria requirements can be consistently measured by the panel, except for determining if a facility has an “outstanding record” regarding the number and types of complaints reported to the ombudsman council. The removal of this requirement will help remove subjectivity from the determination of the Gold Seal Award recommendations

According to s. 400.235(3)(a), F.S., the Ombudsman is required to serve on the Governor’s Panel on Excellence in Long-Term Care. This allows the Ombudsman to have a vote in the Panel’s recommendation and input into any rules developed for the Gold Seal Program.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 400.0060, F.S., relating to administrative assessments.
- Section 2:** Amends s. 400.0061, F.S., relating to Legislative findings and intent; long-term care facilities.
- Section 3:** Amends s. 400.0067, F.S., relating to duties and membership of the State Long-Term Care Ombudsman Council.
- Section 4:** Amends s. 400.0069, F.S., relating to duties and membership of local long-term care ombudsman councils.
- Section 5:** Amends s. 400.0071, F.S., relating to State Long-Term Care Ombudsman Program complaint procedures.
- Section 6:** Amends s. 400.0074, F.S., relating to local ombudsman council onsite administrative assessments.
- Section 7:** Repeals s. 400.0089, F.S., relating complaint data reports.
- Section 8:** Amends s. 400.19, F.S., relating to right of entry and inspection.
- Section 9:** Amends s. 400.235, F.S., relating to nursing home quality and licensure status; Gold Seal Program.
- Section 10:** Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill does not appear to have a fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rule-making authority for DOEA and AHCA will not be affected as a result of the bill. However, AHCA rule 59A-4.205, F.A.C., will not be necessary anymore as it requires the State Long-Term Care Ombudsman Council to provide a profile of substantiated ombudsman program complaints against licensees applying for the Gold Seal Award.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 5, 2011, the Health and Human Services Access Subcommittee adopted two amendments. The amendments made the following changes:

- Amendment 1 removed section 7 of the bill, which required ombudsman staff to produce written permission in order to access medical and social records for review.
- Amendment 2 restores s. 400.0074, F.S., which was repealed in the original bill. In addition, this section is amended to replace the current onsite administrative assessment process with a resident focused assessment process.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.