

CS/HB 1171

2011

1 A bill to be entitled
2 An act relating to the Long-Term Care Ombudsman Program;
3 amending ss. 400.0060 and 400.0067, F.S.; removing
4 references to onsite administrative assessments and
5 conforming cross-references to changes made by the act;
6 amending s. 400.0061, F.S.; revising legislative intent;
7 amending s. 400.0069, F.S.; providing additional duties of
8 the local long-term care ombudsman councils; amending s.
9 400.0071, F.S.; revising rules relating to State Long-Term
10 Care Ombudsman Program complaint procedures; amending s.
11 400.0074, F.S.; revising the current administrative
12 assessment process from a facility-focused inspection to a
13 resident-focused inspection; repealing s. 400.0089, F.S.,
14 relating to data reports regarding complaints about and
15 conditions in long-term care facilities; amending s.
16 400.19, F.S.; revising conditions under which the Agency
17 for Health Care Administration is required to conduct
18 unannounced onsite facility reviews; amending s. 400.235,
19 F.S.; eliminating the role of the State Long-Term Care
20 Ombudsman Council in evaluating a nursing facility for the
21 Gold Seal Program; providing an effective date.

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

24
25 Section 1. Subsections (2) through (10) of section
26 400.0060, Florida Statutes, are renumbered as subsections (1)
27 through (9), respectively, and present subsection (1) of that
28 section is amended to read:

CS/HB 1171

2011

29 400.0060 Definitions.—When used in this part, unless the
 30 context clearly dictates otherwise, the term:

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

36 Section 2. Subsection (2) of section 400.0061, Florida
 37 Statutes, is amended to read:

38 400.0061 Legislative findings and intent; long-term care
 39 facilities.—

40 (2) It is the intent of the Legislature, therefore, to
 41 utilize voluntary citizen ombudsman councils under the
 42 leadership of the ombudsman, and through them to operate an
 43 ombudsman program which shall, without interference by any
 44 executive agency, undertake to discover, investigate, and
 45 determine the presence of conditions or individuals which
 46 constitute a threat to the rights, health, safety, or welfare of
 47 the residents of long-term care facilities. To ensure that the
 48 effectiveness and efficiency of such investigations are not
 49 impeded by advance notice or delay, the Legislature intends that
 50 the ombudsman and ombudsman councils and their designated
 51 representatives not be required to obtain warrants in order to
 52 enter into a long-term care facility to conduct the duties of
 53 the Office of State Long-Term Care Ombudsman, the State Long-
 54 Term Care Ombudsman Council, or a local long-term care ombudsman
 55 council ~~or conduct investigations or onsite administrative~~
 56 ~~assessments of long-term care facilities.~~ It is the further

CS/HB 1171

2011

57 | intent of the Legislature that the environment in long-term care
 58 | facilities be conducive to the dignity and independence of
 59 | residents and that investigations by ombudsman councils shall
 60 | further the enforcement of laws, rules, and regulations that
 61 | safeguard the health, safety, and welfare of residents.

62 | Section 3. Paragraph (b) of subsection (2) of section
 63 | 400.0067, Florida Statutes, is amended to read:

64 | 400.0067 State Long-Term Care Ombudsman Council; duties;
 65 | membership.—

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

67 | (b) Serve as an appellate body in receiving from the local
 68 | councils complaints not resolved at the local level. Any
 69 | individual member or members of the state council may enter any
 70 | long-term care facility involved in an appeal, ~~pursuant to the~~
 71 | ~~conditions specified in s. 400.0074(2).~~

72 | Section 4. Subsection (3) of section 400.0069, Florida
 73 | Statutes, is amended, and paragraphs (h) and (i) are added to
 74 | subsection (2) of that section, to read:

75 | 400.0069 Local long-term care ombudsman councils; duties;
 76 | membership.—

77 | (2) The duties of the local councils are to:

78 | (h) Ensure that residents have regular, timely access to
 79 | the ombudsman through visitations and that residents and
 80 | complainants receive timely responses to their complaints.

81 | (i) Provide technical support for the development of
 82 | resident and family councils to protect the well-being and
 83 | rights of residents.

84 | (3) In order to carry out the duties specified in

85 subsection (2), a member of a local council is authorized to
 86 enter any long-term care facility without notice or first
 87 obtaining a warrant, ~~subject to the provisions of s.~~
 88 ~~400.0074(2).~~

89 Section 5. Section 400.0071, Florida Statutes, is amended
 90 to read:

91 400.0071 State Long-Term Care Ombudsman Program complaint
 92 procedures.—The department shall adopt rules implementing state
 93 and local complaint procedures. The rules must include
 94 procedures for:

95 (1) Receiving complaints made by or on behalf of long-term
 96 care facility residents ~~against a long-term care facility or an~~
 97 ~~employee of a long-term care facility.~~

98 (2) Conducting complaint investigations on behalf of long-
 99 term care facility residents ~~of a long-term care facility or an~~
 100 ~~employee of a long-term care facility subsequent to receiving a~~
 101 ~~complaint.~~

102 ~~(3) Conducting onsite administrative assessments of long-~~
 103 ~~term care facilities.~~

104 Section 6. Section 400.0074, Florida Statutes, is amended
 105 to read:

106 400.0074 Local ombudsman council resident-focused onsite
 107 ~~administrative assessments.~~—

108 (1) In addition to any specific investigation conducted
 109 pursuant to a complaint, the local council shall conduct
 110 resident-focused assessments of a, at least annually, an onsite
 111 ~~administrative assessment of each~~ nursing home, assisted living
 112 facility, and adult family-care home within its jurisdiction.

113 This ~~administrative~~ assessment shall focus on factors affecting
 114 the rights, health, safety, and welfare of the residents. Each
 115 local council is encouraged to conduct a similar onsite
 116 ~~administrative~~ assessment of each additional long-term care
 117 facility within its jurisdiction.

118 (2) The development of a resident-focused assessment
 119 process shall be completed by a workgroup composed of one
 120 representative from each of the following entities: the State
 121 Long-Term Care Ombudsman, the State Long-Term Care Ombudsman
 122 Council, the local council, the Florida Health Care Association,
 123 the Florida Association of Homes and Services for the Aging, the
 124 Florida Assisted Living Association, and the Executive Office of
 125 the Governor by October 1, 2011.

126 ~~(3)(2) A resident-focused~~ ~~An onsite administrative~~
 127 assessment conducted by a local council shall be subject to the
 128 following conditions:

129 ~~(a) To the extent possible and reasonable, the~~
 130 ~~administrative assessments shall not duplicate the efforts of~~
 131 ~~the agency surveys and inspections conducted under part II of~~
 132 ~~this chapter and parts I and II of chapter 429.~~

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

136 ~~(c) Advance notice of an administrative assessment may not~~
 137 ~~be provided to a long-term care facility, except that notice of~~
 138 ~~followup assessments on specific problems may be provided.~~

139 (a)(d) A local council member physically present for the
 140 ~~administrative~~ assessment shall identify himself or herself to

141 | the facility administrator and cite the specific statutory
 142 | authority for his or her assessment ~~of the facility~~.

143 | (b)~~(e)~~ An ~~administrative~~ assessment may not unreasonably
 144 | interfere with the programs and activities of residents.

145 | (c)~~(f)~~ A local council member may not enter a single-
 146 | family residential unit within a long-term care facility during
 147 | an ~~administrative~~ assessment without the permission of the
 148 | resident or the representative of the resident.

149 | (d)~~(g)~~ An ~~administrative~~ assessment must be conducted in a
 150 | manner that will impose no unreasonable burden on a long-term
 151 | care facility.

152 | (4)~~(3)~~ Regardless of jurisdiction, the ombudsman may
 153 | authorize a state or local council member to assist another
 154 | local council to perform the ~~administrative~~ assessments
 155 | described in this section.

156 | (5)~~(4)~~ An ~~onsite administrative~~ assessment may not be
 157 | accomplished by forcible entry. However, if the ombudsman or a
 158 | state or local council member is not allowed to enter a long-
 159 | term care facility, the administrator of the facility shall be
 160 | considered to have interfered with a representative of the
 161 | office, the state council, or the local council in the
 162 | performance of official duties as described in s. 400.0083(1)
 163 | and to have committed a violation of this part. The ombudsman
 164 | shall report the refusal by a facility to allow entry to the
 165 | agency, and the agency shall record the report and take it into
 166 | consideration when determining actions allowable under s.
 167 | 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
 168 | 429.71.

CS/HB 1171

2011

169 Section 7. Section 400.0089, Florida Statutes, is
 170 repealed.

171 Section 8. Subsection (4) of section 400.19, Florida
 172 Statutes, is amended to read:

173 400.19 Right of entry and inspection.—

174 (4) The agency shall conduct unannounced onsite facility
 175 reviews ~~following written verification of licensee noncompliance~~
 176 ~~in instances in which a long-term care ombudsman council,~~
 177 ~~pursuant to ss. 400.0071 and 400.0075, has received a complaint~~
 178 ~~and has documented deficiencies in resident care or in the~~
 179 ~~physical plant of the facility that threaten the health, safety,~~
 180 ~~or security of residents, or when the agency documents through~~
 181 inspection that conditions in a facility present a direct or
 182 indirect threat to the health, safety, or security of residents.
 183 However, the agency shall conduct unannounced onsite reviews
 184 every 3 months of each facility while the facility has a
 185 conditional license. Deficiencies related to physical plant do
 186 not require followup reviews after the agency has determined
 187 that correction of the deficiency has been accomplished and that
 188 the correction is of the nature that continued compliance can be
 189 reasonably expected.

190 Section 9. Paragraphs (f) and (g) of subsection (5) of
 191 section 400.235, Florida Statutes, are amended to read:

192 400.235 Nursing home quality and licensure status; Gold
 193 Seal Program.—

194 (5) Facilities must meet the following additional criteria
 195 for recognition as a Gold Seal Program facility:

196 ~~(f) Evidence an outstanding record regarding the number~~

CS/HB 1171

2011

197 ~~and types of substantiated complaints reported to the State~~
198 ~~Long Term Care Ombudsman Council within the 30 months preceding~~
199 ~~application for the program.~~

200 (f) ~~(g)~~ Provide targeted inservice training provided to
201 meet training needs identified by internal or external quality
202 assurance efforts.

203

204 A facility assigned a conditional licensure status may not
205 qualify for consideration for the Gold Seal Program until after
206 it has operated for 30 months with no class I or class II
207 deficiencies and has completed a regularly scheduled relicensure
208 survey.

209 Section 10. This act shall take effect July 1, 2011.