

1 A bill to be entitled
 2 An act relating to health and human services; repealing s.
 3 394.4595, F.S., relating to access to patients and their
 4 records by Florida statewide and local advocacy councils;
 5 repealing s. 402.164, F.S., relating to legislative intent
 6 and definitions applicable to advocacy councils; repealing
 7 s. 402.165, F.S., relating to the establishment of the
 8 Florida Statewide Advocacy Council; repealing s. 402.166,
 9 F.S., relating to the establishment of the Florida local
 10 advocacy councils; repealing s. 402.167, F.S., relating to
 11 the duties of state agencies that provide client services
 12 relating to the Florida Statewide Advocacy Council and the
 13 Florida local advocacy councils; amending s. 408.036,
 14 F.S.; eliminating an annual report submitted to the
 15 Legislature by the Agency for Health Care Administration;
 16 repealing s. 408.18, F.S., relating to the Health Care
 17 Community Antitrust Guidance Act; repealing s. 408.185,
 18 F.S., relating to confidentiality of information submitted
 19 for review of antitrust issues; amending ss. 39.001,
 20 39.0011, 39.202, 39.302, 394.459, 394.4597, 394.4598,
 21 394.4599, 394.4615, 400.0065, 400.141, 415.1034, 415.104,
 22 415.1055, 415.106, 415.107, 429.19, 429.28, and 429.34,
 23 F.S.; conforming references; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Sections 394.4595, 402.164, 402.165, 402.166,
 28 402.167, 408.18, and 408.185, Florida Statutes, are repealed.

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29 Section 2. Paragraph (a) of subsection (8) of section
30 39.001, Florida Statutes, is amended to read:

31 39.001 Purposes and intent; personnel standards and
32 screening.—

33 (8) PLAN FOR COMPREHENSIVE APPROACH.—

34 (a) The office shall develop a state plan for the
35 promotion of adoption, support of adoptive families, and
36 prevention of abuse, abandonment, and neglect of children and
37 shall submit the state plan to the Speaker of the House of
38 Representatives, the President of the Senate, and the Governor
39 no later than December 31, 2008. The Department of Children and
40 Family Services, the Department of Corrections, the Department
41 of Education, the Department of Health, the Department of
42 Juvenile Justice, the Department of Law Enforcement, the Agency
43 for Persons with Disabilities, and the Agency for Workforce
44 Innovation shall participate and fully cooperate in the
45 development of the state plan at both the state and local
46 levels. Furthermore, appropriate local agencies and
47 organizations shall be provided an opportunity to participate in
48 the development of the state plan at the local level.
49 Appropriate local groups and organizations shall include, but
50 not be limited to, community mental health centers; guardian ad
51 litem programs for children under the circuit court; the school
52 boards of the local school districts; ~~the Florida local advocacy~~
53 ~~councils;~~ community-based care lead agencies; private or public
54 organizations or programs with recognized expertise in working
55 with child abuse prevention programs for children and families;
56 private or public organizations or programs with recognized

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57 expertise in working with children who are sexually abused,
58 physically abused, emotionally abused, abandoned, or neglected
59 and with expertise in working with the families of such
60 children; private or public programs or organizations with
61 expertise in maternal and infant health care; multidisciplinary
62 child protection teams; child day care centers; law enforcement
63 agencies; and the circuit courts, when guardian ad litem
64 programs are not available in the local area. The state plan to
65 be provided to the Legislature and the Governor shall include,
66 as a minimum, the information required of the various groups in
67 paragraph (b).

68 Section 3. Subsection (2) of section 39.0011, Florida
69 Statutes, is amended to read:

70 39.0011 Direct-support organization.—

71 (2) The number of members on the board of directors of the
72 direct-support organization shall be determined by the Chief
73 Child Advocate. Membership on the board of directors of the
74 direct-support organization shall include, but not be limited
75 to, a guardian ad litem; ~~a member of a local advocacy council;~~ a
76 representative from a community-based care lead agency; a
77 representative from a private or public organization or program
78 with recognized expertise in working with child abuse prevention
79 programs for children and families; a representative of a
80 private or public organization or program with recognized
81 expertise in working with children who are sexually abused,
82 physically abused, emotionally abused, abandoned, or neglected
83 and with expertise in working with the families of such
84 children; an individual working at a state adoption agency; and

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85 the parent of a child adopted from within the child welfare
86 system.

87 Section 4. Paragraph (k) of subsection (2) of section
88 39.202, Florida Statutes, is amended to read:

89 39.202 Confidentiality of reports and records in cases of
90 child abuse or neglect.—

91 (2) Except as provided in subsection (4), access to such
92 records, excluding the name of the reporter which shall be
93 released only as provided in subsection (5), shall be granted
94 only to the following persons, officials, and agencies:

95 (k) ~~Any appropriate official of a Florida advocacy council~~
96 ~~investigating a report of known or suspected child abuse,~~
97 ~~abandonment, or neglect;~~ The Auditor General or the Office of
98 Program Policy Analysis and Government Accountability for the
99 purpose of conducting audits or examinations pursuant to law, or
100 the guardian ad litem for the child.

101 Section 5. Subsections (5) through (7) of section 39.302,
102 Florida Statutes, are renumbered as subsections (4) through (6),
103 respectively, and present subsection (4) of that section is
104 amended to read:

105 39.302 Protective investigations of institutional child
106 abuse, abandonment, or neglect.—

107 ~~(4) The department shall notify the Florida local advocacy~~
108 ~~council in the appropriate district of the department as to~~
109 ~~every report of institutional child abuse, abandonment, or~~
110 ~~neglect in the district in which a client of the department is~~
111 ~~alleged or shown to have been abused, abandoned, or neglected,~~
112 ~~which notification shall be made within 48 hours after the~~

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113 ~~department commences its investigation.~~

114 Section 6. Paragraph (c) of subsection (5) and subsection
115 (12) of section 394.459, Florida Statutes, are amended to read:
116 394.459 Rights of patients.—

117 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

118 (c) Each facility must permit immediate access to any
119 patient, subject to the patient's right to deny or withdraw
120 consent at any time, by the patient's family members, guardian,
121 guardian advocate, representative, ~~Florida statewide or local~~
122 ~~advocacy council~~, or attorney, unless such access would be
123 detrimental to the patient. If a patient's right to communicate
124 or to receive visitors is restricted by the facility, written
125 notice of such restriction and the reasons for the restriction
126 shall be served on the patient, the patient's attorney, and the
127 patient's guardian, guardian advocate, or representative; and
128 such restriction shall be recorded on the patient's clinical
129 record with the reasons therefor. The restriction of a patient's
130 right to communicate or to receive visitors shall be reviewed at
131 least every 7 days. The right to communicate or receive visitors
132 shall not be restricted as a means of punishment. Nothing in
133 this paragraph shall be construed to limit the provisions of
134 paragraph (d).

135 (12) POSTING OF NOTICE OF RIGHTS OF PATIENTS.—Each
136 facility shall post a notice listing and describing, in the
137 language and terminology that the persons to whom the notice is
138 addressed can understand, the rights provided in this section.
139 This notice shall include a statement that provisions of the
140 federal Americans with Disabilities Act apply and the name and

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141 telephone number of a person to contact for further information.
 142 This notice shall be posted in a place readily accessible to
 143 patients and in a format easily seen by patients. This notice
 144 shall include the telephone number ~~numbers~~ of the ~~Florida local~~
 145 ~~advocacy council~~ and Advocacy Center for Persons with
 146 Disabilities, Inc.

147 Section 7. Paragraph (d) of subsection (2) of section
 148 394.4597, Florida Statutes, is amended to read:

149 394.4597 Persons to be notified; patient's
 150 representative.—

151 (2) INVOLUNTARY PATIENTS.—

152 (d) When the receiving or treatment facility selects a
 153 representative, first preference shall be given to a health care
 154 surrogate, if one has been previously selected by the patient.
 155 If the patient has not previously selected a health care
 156 surrogate, the selection, except for good cause documented in
 157 the patient's clinical record, shall be made from the following
 158 list in the order of listing:

- 159 1. The patient's spouse.
- 160 2. An adult child of the patient.
- 161 3. A parent of the patient.
- 162 4. The adult next of kin of the patient.
- 163 5. An adult friend of the patient.
- 164 ~~6. The appropriate Florida local advocacy council as~~
 165 ~~provided in s. 402.166.~~

166 Section 8. Subsection (1) of section 394.4598, Florida
 167 Statutes, is amended to read:

168 394.4598 Guardian advocate.—

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169 (1) The administrator may petition the court for the
170 appointment of a guardian advocate based upon the opinion of a
171 psychiatrist that the patient is incompetent to consent to
172 treatment. If the court finds that a patient is incompetent to
173 consent to treatment and has not been adjudicated incapacitated
174 and a guardian with the authority to consent to mental health
175 treatment appointed, it shall appoint a guardian advocate. The
176 patient has the right to have an attorney represent him or her
177 at the hearing. If the person is indigent, the court shall
178 appoint the office of the public defender to represent him or
179 her at the hearing. The patient has the right to testify, cross-
180 examine witnesses, and present witnesses. The proceeding shall
181 be recorded either electronically or stenographically, and
182 testimony shall be provided under oath. One of the professionals
183 authorized to give an opinion in support of a petition for
184 involuntary placement, as described in s. 394.4655 or s.
185 394.467, must testify. A guardian advocate must meet the
186 qualifications of a guardian contained in part IV of chapter
187 744, except that a professional referred to in this part, an
188 employee of the facility providing direct services to the
189 patient under this part, a departmental employee, or a facility
190 administrator, ~~or member of the Florida local advocacy council~~
191 shall not be appointed. A person who is appointed as a guardian
192 advocate must agree to the appointment.

193 Section 9. Paragraph (b) of subsection (2) of section
194 394.4599, Florida Statutes, is amended to read:

195 394.4599 Notice.—

196 (2) INVOLUNTARY PATIENTS.—

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197 (b) A receiving facility shall give prompt notice of the
 198 whereabouts of a patient who is being involuntarily held for
 199 examination, by telephone or in person within 24 hours after the
 200 patient's arrival at the facility, unless the patient requests
 201 that no notification be made. Contact attempts shall be
 202 documented in the patient's clinical record and shall begin as
 203 soon as reasonably possible after the patient's arrival. ~~Notice~~
 204 ~~that a patient is being admitted as an involuntary patient shall~~
 205 ~~be given to the Florida local advocacy council no later than the~~
 206 ~~next working day after the patient is admitted.~~

207 Section 10. Subsection (5) of section 394.4615, Florida
 208 Statutes, is amended to read:

209 394.4615 Clinical records; confidentiality.—

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

214 Section 11. Paragraphs (h) and (i) of subsection (2) of
 215 section 400.0065, Florida Statutes, are redesignated as
 216 paragraphs (g) and (h), respectively, and present paragraph (g)
 217 of that subsection is amended to read:

218 400.0065 State Long-Term Care Ombudsman; duties and
 219 responsibilities.—

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

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

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225 Section 12. Paragraph (m) of subsection (1) of section
 226 400.141, Florida Statutes, is amended to read:

227 400.141 Administration and management of nursing home
 228 facilities.—

229 (1) Every licensed facility shall comply with all
 230 applicable standards and rules of the agency and shall:

231 (m) Publicly display a poster provided by the agency
 232 containing the names, addresses, and telephone numbers for the
 233 state's abuse hotline, the State Long-Term Care Ombudsman, the
 234 Agency for Health Care Administration consumer hotline, the
 235 Advocacy Center for Persons with Disabilities, ~~the Florida~~
 236 ~~Statewide Advocacy Council~~, and the Medicaid Fraud Control Unit,
 237 with a clear description of the assistance to be expected from
 238 each.

239 Section 13. Paragraph (m) of subsection (3) of section
 240 408.036, Florida Statutes, is amended to read:

241 408.036 Projects subject to review; exemptions.—

242 (3) EXEMPTIONS.—Upon request, the following projects are
 243 subject to exemption from the provisions of subsection (1):

244 (m)1. For the provision of adult open-heart services in a
 245 hospital located within the boundaries of a health service
 246 planning district, as defined in s. 408.032(5), which has
 247 experienced an annual net out-migration of at least 600 open-
 248 heart-surgery cases for 3 consecutive years according to the
 249 most recent data reported to the agency, and the district's
 250 population per licensed and operational open-heart programs
 251 exceeds the state average of population per licensed and
 252 operational open-heart programs by at least 25 percent. All

253 hospitals within a health service planning district which meet
 254 the criteria reference in sub-subparagraphs 2.a.-h. shall be
 255 eligible for this exemption on July 1, 2004, and shall receive
 256 the exemption upon filing for it and subject to the following:

257 a. A hospital that has received a notice of intent to
 258 grant a certificate of need or a final order of the agency
 259 granting a certificate of need for the establishment of an open-
 260 heart-surgery program is entitled to receive a letter of
 261 exemption for the establishment of an adult open-heart-surgery
 262 program upon filing a request for exemption and complying with
 263 the criteria enumerated in sub-subparagraphs 2.a.-h., and is
 264 entitled to immediately commence operation of the program.

265 b. An otherwise eligible hospital that has not received a
 266 notice of intent to grant a certificate of need or a final order
 267 of the agency granting a certificate of need for the
 268 establishment of an open-heart-surgery program is entitled to
 269 immediately receive a letter of exemption for the establishment
 270 of an adult open-heart-surgery program upon filing a request for
 271 exemption and complying with the criteria enumerated in sub-
 272 subparagraphs 2.a.-h., but is not entitled to commence operation
 273 of its program until December 31, 2006.

274 2. A hospital shall be exempt from the certificate-of-need
 275 review for the establishment of an open-heart-surgery program
 276 when the application for exemption submitted under this
 277 paragraph complies with the following criteria:

278 a. The applicant must certify that it will meet and
 279 continuously maintain the minimum licensure requirements adopted
 280 by the agency governing adult open-heart programs, including the

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281 most current guidelines of the American College of Cardiology
282 and American Heart Association Guidelines for Adult Open Heart
283 Programs.

284 b. The applicant must certify that it will maintain
285 sufficient appropriate equipment and health personnel to ensure
286 quality and safety.

287 c. The applicant must certify that it will maintain
288 appropriate times of operation and protocols to ensure
289 availability and appropriate referrals in the event of
290 emergencies.

291 d. The applicant can demonstrate that it has discharged at
292 least 300 inpatients with a principal diagnosis of ischemic
293 heart disease for the most recent 12-month period as reported to
294 the agency.

295 e. The applicant is a general acute care hospital that is
296 in operation for 3 years or more.

297 f. The applicant is performing more than 300 diagnostic
298 cardiac catheterization procedures per year, combined inpatient
299 and outpatient.

300 g. The applicant's payor mix at a minimum reflects the
301 community average for Medicaid, charity care, and self-pay
302 patients or the applicant must certify that it will provide a
303 minimum of 5 percent of Medicaid, charity care, and self-pay to
304 open-heart-surgery patients.

305 h. If the applicant fails to meet the established criteria
306 for open-heart programs or fails to reach 300 surgeries per year
307 by the end of its third year of operation, it must show cause
308 why its exemption should not be revoked.

309 ~~3. By December 31, 2004, and annually thereafter, the~~
 310 ~~agency shall submit a report to the Legislature providing~~
 311 ~~information concerning the number of requests for exemption it~~
 312 ~~has received under this paragraph during the calendar year and~~
 313 ~~the number of exemptions it has granted or denied during the~~
 314 ~~calendar year.~~

315 Section 14. Paragraph (a) of subsection (1) of section
 316 415.1034, Florida Statutes, is amended to read:

317 415.1034 Mandatory reporting of abuse, neglect, or
 318 exploitation of vulnerable adults; mandatory reports of death.-

319 (1) MANDATORY REPORTING.-

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

321 1. Physician, osteopathic physician, medical examiner,
 322 chiropractic physician, nurse, paramedic, emergency medical
 323 technician, or hospital personnel engaged in the admission,
 324 examination, care, or treatment of vulnerable adults;

325 2. Health professional or mental health professional other
 326 than one listed in subparagraph 1.;

327 3. Practitioner who relies solely on spiritual means for
 328 healing;

329 4. Nursing home staff; assisted living facility staff;
 330 adult day care center staff; adult family-care home staff;
 331 social worker; or other professional adult care, residential, or
 332 institutional staff;

333 5. State, county, or municipal criminal justice employee
 334 or law enforcement officer;

335 6. An employee of the Department of Business and
 336 Professional Regulation conducting inspections of public lodging

337 establishments under s. 509.032; or

338 ~~7. Florida advocacy council member or long-term care~~
 339 ~~ombudsman council member; or~~

340 7.8. Bank, savings and loan, or credit union officer,
 341 trustee, or employee,

342
 343 who knows, or has reasonable cause to suspect, that a vulnerable
 344 adult has been or is being abused, neglected, or exploited shall
 345 immediately report such knowledge or suspicion to the central
 346 abuse hotline.

347 Section 15. Subsection (1) of section 415.104, Florida
 348 Statutes, is amended to read:

349 415.104 Protective investigations of cases of abuse,
 350 neglect, or exploitation of vulnerable adults; transmittal of
 351 records to state attorney.—

352 (1) The department shall, upon receipt of a report
 353 alleging abuse, neglect, or exploitation of a vulnerable adult,
 354 begin within 24 hours a protective investigation of the facts
 355 alleged therein. If a caregiver refuses to allow the department
 356 to begin a protective investigation or interferes with the
 357 conduct of such an investigation, the appropriate law
 358 enforcement agency shall be contacted for assistance. If, during
 359 the course of the investigation, the department has reason to
 360 believe that the abuse, neglect, or exploitation is perpetrated
 361 by a second party, the appropriate law enforcement agency and
 362 state attorney shall be orally notified. The department and the
 363 law enforcement agency shall cooperate to allow the criminal
 364 investigation to proceed concurrently with, and not be hindered

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365 by, the protective investigation. The department shall make a
 366 preliminary written report to the law enforcement agencies
 367 within 5 working days after the oral report. The department
 368 shall, within 24 hours after receipt of the report, notify the
 369 ~~appropriate Florida local advocacy council, or~~ long-term care
 370 ombudsman council, ~~when appropriate,~~ that an alleged abuse,
 371 neglect, or exploitation perpetrated by a second party has
 372 occurred. Notice to the ~~Florida local advocacy council or~~ long-
 373 term care ombudsman council may be accomplished orally or in
 374 writing and shall include the name and location of the
 375 vulnerable adult alleged to have been abused, neglected, or
 376 exploited and the nature of the report.

377 Section 16. Subsection (8) of section 415.1055, Florida
 378 Statutes, is amended to read:

379 415.1055 Notification to administrative entities.—

380 (8) At the conclusion of a protective investigation at a
 381 facility, the department shall notify ~~either the Florida local~~
 382 ~~advocacy council or~~ long-term care ombudsman council of the
 383 results of the investigation. This notification must be in
 384 writing.

385 Section 17. Subsection (2) of section 415.106, Florida
 386 Statutes, is amended to read:

387 415.106 Cooperation by the department and criminal justice
 388 and other agencies.—

389 (2) To ensure coordination, communication, and cooperation
 390 with the investigation of abuse, neglect, or exploitation of
 391 vulnerable adults, the department shall develop and maintain
 392 interprogram agreements or operational procedures among

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393 appropriate departmental programs and the State Long-Term Care
 394 Ombudsman Council, ~~the Florida Statewide Advocacy Council,~~ and
 395 other agencies that provide services to vulnerable adults. These
 396 agreements or procedures must cover such subjects as the
 397 appropriate roles and responsibilities of the department in
 398 identifying and responding to reports of abuse, neglect, or
 399 exploitation of vulnerable adults; the provision of services;
 400 and related coordinated activities.

401 Section 18. Paragraph (g) of subsection (3) of section
 402 415.107, Florida Statutes, is amended to read:

403 415.107 Confidentiality of reports and records.—

404 (3) Access to all records, excluding the name of the
 405 reporter which shall be released only as provided in subsection
 406 (6), shall be granted only to the following persons, officials,
 407 and agencies:

408 (g) Any appropriate official of the ~~Florida advocacy~~
 409 ~~council~~ or long-term care ombudsman council investigating a
 410 report of known or suspected abuse, neglect, or exploitation of
 411 a vulnerable adult.

412 Section 19. Subsection (9) of section 429.19, Florida
 413 Statutes, is amended to read:

414 429.19 Violations; imposition of administrative fines;
 415 grounds.—

416 (9) The agency shall develop and disseminate an annual
 417 list of all facilities sanctioned or fined for violations of
 418 state standards, the number and class of violations involved,
 419 the penalties imposed, and the current status of cases. The list
 420 shall be disseminated, at no charge, to the Department of

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421 Elderly Affairs, the Department of Health, the Department of
 422 Children and Family Services, the Agency for Persons with
 423 Disabilities, the area agencies on aging, ~~the Florida Statewide~~
 424 ~~Advocacy Council,~~ and the state and local ombudsman councils.
 425 The Department of Children and Family Services shall disseminate
 426 the list to service providers under contract to the department
 427 who are responsible for referring persons to a facility for
 428 residency. The agency may charge a fee commensurate with the
 429 cost of printing and postage to other interested parties
 430 requesting a copy of this list. This information may be provided
 431 electronically or through the agency's Internet site.

432 Section 20. Subsection (2) of section 429.28, Florida
 433 Statutes, is amended to read:

434 429.28 Resident bill of rights.—

435 (2) The administrator of a facility shall ensure that a
 436 written notice of the rights, obligations, and prohibitions set
 437 forth in this part is posted in a prominent place in each
 438 facility and read or explained to residents who cannot read.
 439 This notice shall include the name, address, and telephone
 440 numbers of the local ombudsman council and central abuse hotline
 441 and, when applicable, the Advocacy Center for Persons with
 442 Disabilities, Inc., ~~and the Florida local advocacy council,~~
 443 where complaints may be lodged. The facility must ensure a
 444 resident's access to a telephone to call the local ombudsman
 445 council, central abuse hotline, and Advocacy Center for Persons
 446 with Disabilities, Inc., ~~and the Florida local advocacy council.~~

447 Section 21. Section 429.34, Florida Statutes, is amended
 448 to read:

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449 429.34 Right of entry and inspection.—In addition to the
450 requirements of s. 408.811, any duly designated officer or
451 employee of the department, the Department of Children and
452 Family Services, the Medicaid Fraud Control Unit of the Office
453 of the Attorney General, the state or local fire marshal, or a
454 member of the state or local long-term care ombudsman council
455 shall have the right to enter unannounced upon and into the
456 premises of any facility licensed pursuant to this part in order
457 to determine the state of compliance with the provisions of this
458 part, part II of chapter 408, and applicable rules. Data
459 collected by the state or local long-term care ombudsman
460 councils ~~or the state or local advocacy councils~~ may be used by
461 the agency in investigations involving violations of regulatory
462 standards.

463 Section 22. This act shall take effect July 1, 2011.