

1 A bill to be entitled
2 An act relating to the state ombudsman program;
3 amending s. 400.0060, F.S.; revising and providing
4 definitions; amending s. 400.0061, F.S.; revising
5 legislative intent with respect to citizen ombudsmen;
6 deleting references to ombudsman councils and
7 transferring their responsibilities to representatives
8 of the Office of State Long-Term Care Ombudsman;
9 amending s. 400.0063, F.S.; revising duties of the
10 office; amending s. 400.0065, F.S.; reorganizing local
11 ombudsman councils; establishing districts; requiring
12 the state ombudsman to submit an annual report to the
13 Governor, the Legislature, and specified agencies and
14 entities; amending s. 400.0067, F.S.; providing duties
15 of the State Long-Term Care Ombudsman Advisory
16 Council; providing for membership, terms, and
17 meetings; amending s. 400.0069, F.S.; requiring the
18 state ombudsman to designate and direct program
19 districts; providing duties of representatives of the
20 office in the districts; providing for appointment and
21 qualifications of district ombudsmen; prohibiting
22 certain individuals from serving as ombudsmen;
23 amending s. 400.0070, F.S.; providing conditions under
24 which a representative of the office could be found to
25 have a conflict of interest; amending s. 400.0071,
26 F.S.; requiring the Department of Elderly Affairs to
27 consult with the state ombudsman before adopting rules
28 pertaining to complaint resolution; amending s.

29 | 400.0073, F.S.; providing procedures for investigation
 30 | of complaints; amending s. 400.0074, F.S.; revising
 31 | procedures for conducting onsite administrative
 32 | assessments; authorizing the department to adopt
 33 | rules; amending s. 400.0075, F.S.; revising complaint
 34 | notification and resolution procedures; amending s.
 35 | 400.0078, F.S.; providing for a resident or
 36 | representative of a resident to receive additional
 37 | information regarding resident rights; amending s.
 38 | 400.0079, F.S.; providing immunity from liability for
 39 | a representative of the office under certain
 40 | circumstances; amending s. 400.0081, F.S.; requiring
 41 | long-term care facilities to provide representatives
 42 | of the office with access to facilities, residents,
 43 | and records for certain purposes; amending s.
 44 | 400.0083, F.S.; conforming provisions to changes made
 45 | by the act; amending s. 400.0087, F.S.; providing for
 46 | the office to coordinate ombudsman services with
 47 | Disability Rights Florida; amending s. 400.0089, F.S.;
 48 | conforming provisions to changes made by the act;
 49 | amending s. 400.0091, F.S.; revising training
 50 | requirements for representatives of the office and
 51 | ombudsmen; amending ss. 20.41, 400.021, 400.022,
 52 | 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23,
 53 | 400.235, 415.1034, 415.104, 415.1055, 415.106,
 54 | 415.107, 429.02, 429.07, 429.19, 429.26, 429.28,
 55 | 429.34, 429.35, 429.85, and 744.444, F.S.; conforming
 56 | provisions to changes made by the act; providing an

57 | effective date.

58 |

59 | Be It Enacted by the Legislature of the State of Florida:

60 |

61 | Section 1. Section 400.0060, Florida Statutes, is amended
62 | to read:

63 | 400.0060 Definitions.—When used in this part, unless the
64 | context clearly dictates otherwise, the term:

65 | (1) "Administrative assessment" means a review of
66 | conditions in a long-term care facility which impact the rights,
67 | health, safety, and welfare of residents with the purpose of
68 | noting needed improvement and making recommendations to enhance
69 | the quality of life for residents.

70 | (2) "Agency" means the Agency for Health Care
71 | Administration.

72 | (3) "Department" means the Department of Elderly Affairs.

73 | (4) "District" means a geographical area designated by the
74 | state ombudsman in which individuals certified as ombudsmen
75 | carry out the duties of the state ombudsman program. ~~"Local~~
76 | ~~council" means a local long-term care ombudsman council~~
77 | ~~designated by the ombudsman pursuant to s. 400.0069. Local~~
78 | ~~councils are also known as district long-term care ombudsman~~
79 | ~~councils or district councils.~~

80 | (5) "Long-term care facility" means a nursing home
81 | facility, assisted living facility, adult family-care home,
82 | board and care facility, facility where continuing long-term
83 | care is provided, or any other similar residential adult care
84 | facility.

85 (6) "Office" means the Office of State Long-Term Care
 86 Ombudsman created by s. 400.0063.

87 (7) "Ombudsman" means an individual who has been certified
 88 by the state ombudsman as meeting the requirements of ss.
 89 400.0069, 400.0070, and 400.0091 ~~the individual appointed by the~~
 90 ~~Secretary of Elderly Affairs to head the Office of State Long-~~
 91 ~~Term Care Ombudsman.~~

92 (8) "Representative of the office" means the state
 93 ombudsman, employees of the office, and individuals certified as
 94 ombudsmen.

95 (9)~~(8)~~ "Resident" means an individual 60 years of age or
 96 older who resides in a long-term care facility.

97 (10)~~(9)~~ "Secretary" means the Secretary of Elderly
 98 Affairs.

99 (11)~~(10)~~ "State council" means the State Long-Term Care
 100 Ombudsman Advisory Council created by s. 400.0067.

101 (12) "State ombudsman" means the individual appointed by
 102 the Secretary of Elderly Affairs to head the Office of State
 103 Long-Term Care Ombudsman.

104 (13) "State ombudsman program" means the program operating
 105 under the direction of the office.

106 Section 2. Section 400.0061, Florida Statutes, is amended
 107 to read:

108 400.0061 Legislative findings and intent; long-term care
 109 facilities.—

110 (1) The Legislature finds that conditions in long-term
 111 care facilities in this state are such that the rights, health,
 112 safety, and welfare of residents are not fully ensured by rules

113 of the Department of Elderly Affairs or the Agency for Health
 114 Care Administration or by the good faith of owners or operators
 115 of long-term care facilities. Furthermore, there is a need for a
 116 formal mechanism whereby a long-term care facility resident, a
 117 representative of a long-term care facility resident, or any
 118 other concerned citizen may make a complaint against the
 119 facility or its employees, or against other persons who are in a
 120 position to restrict, interfere with, or threaten the rights,
 121 health, safety, or welfare of a long-term care facility
 122 resident. The Legislature finds that concerned citizens are
 123 often more effective advocates for the rights of others than
 124 governmental agencies. The Legislature further finds that in
 125 order to be eligible to receive an allotment of funds authorized
 126 and appropriated under the federal Older Americans Act, the
 127 state must establish and operate an Office of State Long-Term
 128 Care Ombudsman, to be headed by the state ~~Long-Term Care~~
 129 ombudsman, and carry out a state ~~long-term care~~ ombudsman
 130 program.

131 (2) It is the intent of the Legislature, therefore, to
 132 utilize voluntary citizen ombudsmen ~~ombudsman councils~~ under the
 133 leadership of the state ombudsman, and, through them, to operate
 134 a state ~~an~~ ombudsman program, which shall, without interference
 135 by any executive agency, undertake to discover, investigate, and
 136 determine the presence of conditions or individuals that ~~which~~
 137 constitute a threat to the rights, health, safety, or welfare of
 138 the residents of long-term care facilities. To ensure that the
 139 effectiveness and efficiency of such investigations are not
 140 impeded by advance notice or delay, the Legislature intends that

141 representatives of the office ~~the ombudsman and ombudsman~~
 142 ~~councils and their designated representatives~~ not be required to
 143 obtain warrants in order to enter into or conduct investigations
 144 or onsite administrative assessments of long-term care
 145 facilities. It is the further intent of the Legislature that the
 146 environment in long-term care facilities be conducive to the
 147 dignity and independence of residents and that investigations by
 148 representatives of the office ~~ombudsman councils shall~~ further
 149 the enforcement of laws, rules, and regulations that safeguard
 150 the health, safety, and welfare of residents.

151 Section 3. Section 400.0063, Florida Statutes, is amended
 152 to read:

153 400.0063 Establishment of Office of State Long-Term Care
 154 Ombudsman; designation of ombudsman and legal advocate.—

155 (1) There is created an Office of State Long-Term Care
 156 Ombudsman in the Department of Elderly Affairs.

157 (2) (a) The Office of State Long-Term Care Ombudsman shall
 158 be headed by the state ~~Long-Term Care~~ ombudsman, who shall serve
 159 on a full-time basis and shall personally, or through
 160 representatives of the office, carry out the purposes and
 161 functions of the state ombudsman program ~~office~~ in accordance
 162 with state and federal law.

163 (b) The state ombudsman shall be appointed by and shall
 164 serve at the pleasure of the Secretary of Elderly Affairs. The
 165 secretary shall appoint a person who has expertise and
 166 experience in the fields of long-term care and advocacy to serve
 167 as state ombudsman.

168 (3) (a) There is created in the office the position of

169 | legal advocate, who shall be selected by and serve at the
 170 | pleasure of the state ombudsman and shall be a member in good
 171 | standing of The Florida Bar.

172 | (b) The duties of the legal advocate shall include, but
 173 | not be limited to:

174 | 1. Assisting the state ombudsman in carrying out the
 175 | duties of the office with respect to the abuse, neglect,
 176 | exploitation, or violation of rights of residents of long-term
 177 | care facilities.

178 | 2. Assisting the state council and representatives of the
 179 | office ~~local councils~~ in carrying out their responsibilities
 180 | under this part.

181 | 3. Pursuing administrative, legal, and other appropriate
 182 | remedies on behalf of residents.

183 | 4. Serving as legal counsel to the state council and
 184 | representatives of the office ~~local councils, or individual~~
 185 | ~~members thereof~~, against whom any suit or other legal action is
 186 | initiated in connection with the performance of the official
 187 | duties of the state ombudsman program ~~councils or an individual~~
 188 | ~~member~~.

189 | Section 4. Section 400.0065, Florida Statutes, is amended
 190 | to read:

191 | 400.0065 Office of State Long-Term Care Ombudsman; duties
 192 | and responsibilities.—

193 | (1) The purpose of the Office of State Long-Term Care
 194 | Ombudsman shall be to:

195 | (a) Identify, investigate, and resolve complaints made by
 196 | or on behalf of residents of long-term care facilities relating

197 | to actions or omissions by providers or representatives of
 198 | providers of long-term care services, other public or private
 199 | agencies, guardians, or representative payees that may adversely
 200 | affect the health, safety, welfare, or rights of the residents.

201 | (b) Provide services that assist in protecting the health,
 202 | safety, welfare, and rights of residents.

203 | (c) Inform residents, their representatives, and other
 204 | citizens about obtaining the services of the state ~~Long-Term~~
 205 | ~~Care~~ ombudsman program and its representatives.

206 | (d) Ensure that residents have regular and timely access
 207 | to the services provided through the office and that residents
 208 | and complainants receive timely responses from representatives
 209 | of the office to their complaints.

210 | (e) Represent the interests of residents before
 211 | governmental agencies and seek administrative, legal, and other
 212 | remedies to protect the health, safety, welfare, and rights of
 213 | the residents.

214 | (f) Administer the state council ~~and local councils~~.

215 | (g) Analyze, comment on, and monitor the development and
 216 | implementation of federal, state, and local laws, rules, and
 217 | regulations, and other governmental policies and actions, that
 218 | pertain to the health, safety, welfare, and rights of the
 219 | residents, with respect to the adequacy of long-term care
 220 | facilities and services in the state, and recommend any changes
 221 | in such laws, rules, regulations, policies, and actions as the
 222 | office determines to be appropriate and necessary.

223 | (h) Provide technical support for the development of
 224 | resident and family councils to protect the well-being and

225 | rights of residents.

226 | (2) The state ~~Long-Term Care~~ ombudsman shall have the duty
227 | and authority to:

228 | (a) Establish and coordinate districts ~~local councils~~
229 | throughout the state.

230 | (b) Perform the duties specified in state and federal law,
231 | rules, and regulations.

232 | (c) Within the limits of appropriated federal and state
233 | funding, employ such personnel as are necessary to perform
234 | adequately the functions of the office and provide or contract
235 | for legal services to assist the state council and
236 | representatives of the office ~~local councils~~ in the performance
237 | of their duties. ~~Staff positions established for the purpose of~~
238 | ~~coordinating the activities of each local council and assisting~~
239 | ~~its members may be filled by the ombudsman after approval by the~~
240 | ~~secretary. Notwithstanding any other provision of this part,~~
241 | ~~upon certification by the ombudsman that the staff member hired~~
242 | ~~to fill any such position has completed the initial training~~
243 | ~~required under s. 400.0091, such person shall be considered a~~
244 | ~~representative of the State Long-Term Care Ombudsman Program for~~
245 | ~~purposes of this part.~~

246 | (d) Contract for services necessary to carry out the
247 | activities of the office.

248 | (e) Apply for, receive, and accept grants, gifts, or other
249 | payments, including, but not limited to, real property, personal
250 | property, and services from a governmental entity or other
251 | public or private entity or person, and make arrangements for
252 | the use of such grants, gifts, or payments.

253 (f) Coordinate, to the greatest extent possible, state and
 254 local ombudsman services with the protection and advocacy
 255 systems for individuals with developmental disabilities and
 256 mental illnesses and with legal assistance programs for the poor
 257 through adoption of memoranda of understanding and other means.

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

261 (g) ~~(h)~~ Enter into a cooperative agreement with the
 262 Medicaid Fraud Division as prescribed under s. 731(e)(2)(B) of
 263 the Older Americans Act.

264 (h) ~~(i)~~ Prepare an annual report describing the activities
 265 carried out by the office, the state council, and the districts
 266 ~~local councils~~ in the year for which the report is prepared. The
 267 state ombudsman shall submit the report to the secretary, the
 268 United States Assistant Secretary for Aging, the Governor, the
 269 President of the Senate, the Speaker of the House of
 270 Representatives, the Secretary of Children and Families, and the
 271 Secretary of Health Care Administration at least 30 days before
 272 the convening of the regular session of the Legislature. ~~The~~
 273 ~~secretary shall in turn submit the report to the United States~~
 274 ~~Assistant Secretary for Aging, the Governor, the President of~~
 275 ~~the Senate, the Speaker of the House of Representatives, the~~
 276 ~~Secretary of Children and Family Services, and the Secretary of~~
 277 ~~Health Care Administration.~~ The report shall, at a minimum:

- 278 1. Contain and analyze data collected concerning
 279 complaints about and conditions in long-term care facilities and
 280 the disposition of such complaints.

281 2. Evaluate the problems experienced by residents.

282 3. Analyze the successes of the state ombudsman program
 283 during the preceding year, including an assessment of how
 284 successfully the office ~~program~~ has carried out its
 285 responsibilities under the Older Americans Act.

286 4. Provide recommendations for policy, regulatory, and
 287 statutory changes designed to solve identified problems; resolve
 288 residents' complaints; improve residents' lives and quality of
 289 care; protect residents' rights, health, safety, and welfare;
 290 and remove any barriers to the optimal operation of the state
 291 ~~Long-Term Care~~ ombudsman program.

292 5. Contain recommendations from the state ~~Long-Term Care~~
 293 ~~Ombudsman~~ council regarding program functions and activities and
 294 recommendations for policy, regulatory, and statutory changes
 295 designed to protect residents' rights, health, safety, and
 296 welfare.

297 6. Contain any relevant recommendations from
 298 representatives of the office ~~the local councils~~ regarding
 299 program functions and activities.

300 Section 5. Section 400.0067, Florida Statutes, is amended
 301 to read:

302 400.0067 State Long-Term Care Ombudsman Advisory Council;
 303 duties; membership.—

304 (1) There is created, l within the Office of State Long-Term
 305 Care Ombudsman, the State Long-Term Care Ombudsman Advisory
 306 Council.

307 (2) The state ~~Long-Term Care Ombudsman~~ council shall:

308 (a) Serve as an advisory body to assist the state

HB 1015

2013

309 | ombudsman in developing strategies for recruitment, recognition,
310 | and retention of ombudsmen ~~reaching a consensus among local~~
311 | ~~councils on issues affecting residents and impacting the optimal~~
312 | ~~operation of the program.~~

313 | (b) Assist the state ombudsman in developing long-range
314 | strategies and goals for the state ombudsman program. ~~Serve as~~
315 | ~~an appellate body in receiving from the local councils~~
316 | ~~complaints not resolved at the local level. Any individual~~
317 | ~~member or members of the state council may enter any long-term~~
318 | ~~care facility involved in an appeal, pursuant to the conditions~~
319 | ~~specified in s. 400.0074(2).~~

320 | (c) Assist the state ombudsman by analyzing and commenting
321 | on the development and implementation of laws, rules, and
322 | regulations impacting the health, safety, welfare, and rights of
323 | residents to discover, investigate, and determine the existence
324 | of abuse or neglect in any long-term care facility, and work
325 | with the adult protective services program as required in ss.
326 | 415.101-415.113.

327 | ~~(d) Assist the ombudsman in eliciting, receiving,~~
328 | ~~responding to, and resolving complaints made by or on behalf of~~
329 | ~~residents.~~

330 | ~~(d)(e)~~ Solicit Elicit ~~and coordinate state, local, and~~
331 | ~~voluntary organizational~~ assistance for the purpose of improving
332 | the care received by residents as requested by the state
333 | ombudsman.

334 | ~~(f) Assist the ombudsman in preparing the annual report~~
335 | ~~described in s. 400.0065.~~

336 | (3) (a) The state ~~Long-Term Care Ombudsman~~ council shall be

337 | composed of:

338 | 1. A certified ombudsman from each region of the state and
 339 | two at-large certified ombudsmen ~~one active local council member~~
 340 | ~~elected by each local council plus three at-large members~~
 341 | ~~appointed by the Governor.~~

342 | 2. Three long-term care facility administrators or
 343 | providers of long-term care services, each representing a
 344 | nursing home, an assisted living facility, and an adult family
 345 | care home.

346 | 3. One resident of a long-term care facility or a family
 347 | member of a resident of a long-term care facility.

348 | 4. One attorney in good standing with The Florida Bar who
 349 | has experience in elder law, guardianship, long-term care
 350 | facility regulation, or another relevant area.

351 | 5. One physician, physician's assistant, advanced
 352 | registered nurse practitioner, or registered nurse who has
 353 | experience with geriatric patients.

354 | 6. One licensed pharmacist.

355 | 7. One registered dietician or nutritionist.

356 | 8. One clinical social worker licensed under chapter 491
 357 | with experience in providing mental health counseling or one
 358 | mental health counselor as defined in s. 394.455.

359 | 9. One executive director of an area agency on aging.

360 | 10. One at-large member.

361 | ~~(a) Each local council shall elect by majority vote a~~
 362 | ~~representative from among the council members to represent the~~
 363 | ~~interests of the local council on the state council. A local~~
 364 | ~~council chair may not serve as the representative of the local~~

HB 1015

2013

365 ~~council on the state council.~~

366 (b)1. The state ombudsman ~~secretary, after consulting with~~
367 ~~the ombudsman,~~ shall submit to the secretary ~~Governor~~ a list of
368 individuals ~~persons~~ recommended for appointment to the ~~at-large~~
369 ~~positions on the state council. The list shall not include the~~
370 ~~name of any person who is currently serving on a local council.~~

371 2. The secretary ~~Governor~~ shall appoint ~~three at-large~~
372 members chosen from the list.

373 3. If the secretary ~~Governor~~ does not appoint a ~~an at-~~
374 ~~large~~ member to fill a vacant position within 60 days after the
375 list is submitted, the state ombudsman ~~secretary, after~~
376 ~~consulting with the ombudsman,~~ shall appoint a ~~an at-large~~
377 member to fill that vacant position.

378 4. The state council may perform its duties even if one or
379 more positions are vacant.

380 ~~(4) (a) (c) 1.~~ All State council members shall serve 3-year
381 terms.

382 ~~2. A member of the state council may not serve more than~~
383 ~~two consecutive terms.~~

384 ~~3. A local council may recommend removal of its elected~~
385 ~~representative from the state council by a majority vote. If the~~
386 ~~council votes to remove its representative, the local council~~
387 ~~chair shall immediately notify the ombudsman. The secretary~~
388 ~~shall advise the Governor of the local council's vote upon~~
389 ~~receiving notice from the ombudsman.~~

390 (b) 4. The position of any member missing 50 percent or
391 more of the ~~three~~ state council meetings within a 1-year period
392 without cause may be declared vacant by the state ombudsman. The

393 findings of the state ombudsman regarding cause shall be final
 394 and binding.

395 (c)5. Any vacancy on the state council shall be filled in
 396 the same manner as the original appointment.

397 ~~(d)1. The state council shall elect a chair to serve for a~~
 398 ~~term of 1 year. A chair may not serve more than two consecutive~~
 399 ~~terms.~~

400 ~~2. The chair shall select a vice chair from among the~~
 401 ~~members. The vice chair shall preside over the state council in~~
 402 ~~the absence of the chair.~~

403 ~~3. The chair may create additional executive positions as~~
 404 ~~necessary to carry out the duties of the state council. Any~~
 405 ~~person appointed to an executive position shall serve at the~~
 406 ~~pleasure of the chair, and his or her term shall expire on the~~
 407 ~~same day as the term of the chair.~~

408 ~~4. A chair may be immediately removed from office prior to~~
 409 ~~the expiration of his or her term by a vote of two-thirds of all~~
 410 ~~state council members present at any meeting at which a quorum~~
 411 ~~is present. If a chair is removed from office prior to the~~
 412 ~~expiration of his or her term, a replacement chair shall be~~
 413 ~~chosen during the same meeting in the same manner as described~~
 414 ~~in this paragraph, and the term of the replacement chair shall~~
 415 ~~begin immediately. The replacement chair shall serve for the~~
 416 ~~remainder of the term and is eligible to serve two subsequent~~
 417 ~~consecutive terms.~~

418 (d)(e)1. The state council shall meet upon the call of the
 419 state chair or upon the call of the ombudsman. The council shall
 420 meet at least twice yearly ~~quarterly~~ but may meet more

421 frequently as needed.

422 ~~2. A quorum shall be considered present if more than 50~~
 423 ~~percent of all active state council members are in attendance at~~
 424 ~~the same meeting.~~

425 ~~3. The state council may not vote on or otherwise make any~~
 426 ~~decisions resulting in a recommendation that will directly~~
 427 ~~impact the state council or any local council, outside of a~~
 428 ~~publicly noticed meeting at which a quorum is present.~~

429 ~~(e) (f)~~ Members shall receive no compensation but may
 430 ~~shall~~, with approval from the state ombudsman, be reimbursed for
 431 per diem and travel expenses as provided in s. 112.061.

432 Section 6. Section 400.0069, Florida Statutes, is amended
 433 to read:

434 400.0069 ~~Local~~ Long-term care ombudsman districts
 435 ~~councils~~; duties; appointment ~~membership~~.

436 (1) (a) The state ombudsman shall designate districts ~~local~~
 437 ~~long-term care ombudsman councils~~ to carry out the duties of the
 438 state ~~Long-Term Care~~ ombudsman program ~~within local communities~~.
 439 Each district ~~local council~~ shall function under the direction
 440 of the state ombudsman.

441 (b) The state ombudsman shall ensure that there are
 442 representatives of the office ~~is at least one local council~~
 443 ~~operating in each district of the department's planning and~~
 444 ~~service areas. The ombudsman may create additional local~~
 445 ~~councils~~ as necessary to ensure that residents throughout the
 446 state have adequate access to state ~~Long-Term Care~~ ombudsman
 447 program services. ~~The ombudsman, after approval from the~~
 448 ~~secretary, shall designate the jurisdictional boundaries of each~~

449 ~~local council.~~

450 (2) The duties of the representatives of the office in the
 451 districts ~~local councils~~ are to:

452 (a) Provide services to assist in ~~Serve as a third-party~~
 453 ~~mechanism for~~ protecting the health, safety, welfare, and ~~civil~~
 454 ~~and human~~ rights of residents.

455 (b) Discover, investigate, and determine the existence of
 456 abuse, or neglect, or exploitation using in any long-term care
 457 ~~facility and to use~~ the procedures provided for in ss. 415.101-
 458 415.113 when applicable.

459 (c) Identify ~~Elicit, receive,~~ investigate, ~~respond to,~~ and
 460 resolve complaints made by or on behalf of residents relating to
 461 actions or omissions by providers or representatives of
 462 providers of long-term care services, other public or private
 463 agencies, guardians, representative payees, or other individuals
 464 that may adversely affect the health, safety, welfare, or rights
 465 of residents.

466 (d) When directed by the state ombudsman, review and, ~~if~~
 467 ~~necessary,~~ comment on all existing or proposed rules,
 468 regulations, and other governmental policies and actions
 469 relating to long-term care facilities that may potentially have
 470 an effect on the rights, health, safety, and welfare of
 471 residents.

472 (e) Review personal property and money accounts of
 473 residents who are receiving assistance under the Medicaid
 474 program pursuant to an investigation to obtain information
 475 regarding a specific complaint ~~or problem.~~

476 (f) Recommend that the state ombudsman and the legal

477 advocate seek administrative, legal, and other remedies to
 478 protect the health, safety, welfare, and rights of ~~the~~
 479 residents.

480 (g) Provide technical assistance for the development of
 481 resident and family councils within long-term care facilities.

482 (h) ~~(g)~~ Carry out other activities that the state ombudsman
 483 determines to be appropriate.

484 (3) In order to carry out the duties specified in
 485 subsection (2), a representative of the office may ~~member of a~~
 486 ~~local council is authorized to~~ enter any long-term care facility
 487 without notice or without first obtaining a warrant; however,
 488 ~~subject to the provisions of s. 400.0074(2) may apply regarding~~
 489 notice of a followup administrative assessment.

490 (4) Each district ~~local council~~ shall be composed of
 491 ombudsmen ~~members~~ whose primary residences are ~~residence is~~
 492 located within the boundaries of the district ~~local council's~~
 493 jurisdiction.

494 (a) Upon good cause shown, the state ombudsman, in his or
 495 her sole discretion, may appoint an ombudsman to another
 496 district. ~~The ombudsman shall strive to ensure that each local~~
 497 ~~council include the following persons as members:~~

498 ~~1. At least one medical or osteopathic physician whose~~
 499 ~~practice includes or has included a substantial number of~~
 500 ~~geriatric patients and who may practice in a long term care~~
 501 ~~facility;~~

502 ~~2. At least one registered nurse who has geriatric~~
 503 ~~experience;~~

504 ~~3. At least one licensed pharmacist;~~

- 505 ~~4. At least one registered dietitian;~~
- 506 ~~5. At least six nursing home residents or representative~~
- 507 ~~consumer advocates for nursing home residents;~~
- 508 ~~6. At least three residents of assisted living facilities~~
- 509 ~~or adult family care homes or three representative consumer~~
- 510 ~~advocates for alternative long-term care facility residents;~~
- 511 ~~7. At least one attorney; and~~
- 512 ~~8. At least one professional social worker.~~

513 (b) The following individuals may not be appointed as
 514 ombudsmen:

- 515 1. The owner or representative of a long-term care
- 516 facility.
- 517 2. A provider or representative of a provider of long-term
- 518 care services.
- 519 3. An employee of the agency.
- 520 4. An employee of the department, except for
- 521 representatives of the office.
- 522 5. An employee of the Department of Children and Families.
- 523 6. An employee of the Agency for Persons with
- 524 Disabilities. ~~In no case shall the medical director of a long-~~
- 525 ~~term care facility or an employee of the agency, the department,~~
- 526 ~~the Department of Children and Family Services, or the Agency~~
- 527 ~~for Persons with Disabilities serve as a member or as an ex~~
- 528 ~~officio member of a council.~~

529 (5) (a) To be appointed as an ombudsman, an individual
 530 must:

- 531 1. Individuals wishing to join a local council shall
- 532 Submit an application to the state ombudsman or designee.

533 2. Successfully complete level 2 background screening
534 pursuant to s. 430.0402 and chapter 435. ~~The ombudsman shall~~
535 ~~review the individual's application and advise the secretary of~~
536 ~~his or her recommendation for approval or disapproval of the~~
537 ~~candidate's membership on the local council. If the secretary~~
538 ~~approves of the individual's membership, the individual shall be~~
539 ~~appointed as a member of the local council.~~

540 (b) The state ombudsman shall approve or deny the
541 appointment of the individual as an ombudsman. ~~The secretary may~~
542 ~~rescind the ombudsman's approval of a member on a local council~~
543 ~~at any time. If the secretary rescinds the approval of a member~~
544 ~~on a local council, the ombudsman shall ensure that the~~
545 ~~individual is immediately removed from the local council on~~
546 ~~which he or she serves and the individual may no longer~~
547 ~~represent the State Long Term Care Ombudsman Program until the~~
548 ~~secretary provides his or her approval.~~

549 (c) Upon appointment as an ombudsman, the individual may
550 participate in district activities but may not represent the
551 office or conduct any authorized program duties until the
552 individual has completed the initial training specified in s.
553 400.0091(1) and has been certified by the state ombudsman.

554 (d) The state ombudsman, for good cause shown, may rescind
555 the appointment of an individual as an ombudsman. After
556 rescinding the appointment, the individual may not conduct any
557 duties as an ombudsman and may not represent the office or the
558 state ombudsman program. ~~A local council may recommend the~~
559 ~~removal of one or more of its members by submitting to the~~
560 ~~ombudsman a resolution adopted by a two-thirds vote of the~~

561 ~~members of the council stating the name of the member or members~~
562 ~~recommended for removal and the reasons for the recommendation.~~
563 ~~If such a recommendation is adopted by a local council, the~~
564 ~~local council chair or district coordinator shall immediately~~
565 ~~report the council's recommendation to the ombudsman. The~~
566 ~~ombudsman shall review the recommendation of the local council~~
567 ~~and advise the secretary of his or her recommendation regarding~~
568 ~~removal of the council member or members.~~

569 ~~(6) (a) Each local council shall elect a chair for a term~~
570 ~~of 1 year. There shall be no limitation on the number of terms~~
571 ~~that an approved member of a local council may serve as chair.~~

572 ~~(b) The chair shall select a vice chair from among the~~
573 ~~members of the council. The vice chair shall preside over the~~
574 ~~council in the absence of the chair.~~

575 ~~(c) The chair may create additional executive positions as~~
576 ~~necessary to carry out the duties of the local council. Any~~
577 ~~person appointed to an executive position shall serve at the~~
578 ~~pleasure of the chair, and his or her term shall expire on the~~
579 ~~same day as the term of the chair.~~

580 ~~(d) A chair may be immediately removed from office prior~~
581 ~~to the expiration of his or her term by a vote of two thirds of~~
582 ~~the members of the local council. If any chair is removed from~~
583 ~~office prior to the expiration of his or her term, a replacement~~
584 ~~chair shall be elected during the same meeting, and the term of~~
585 ~~the replacement chair shall begin immediately. The replacement~~
586 ~~chair shall serve for the remainder of the term of the person he~~
587 ~~or she replaced.~~

588 ~~(7) Each local council shall meet upon the call of its~~

589 ~~chair or upon the call of the ombudsman. Each local council~~
 590 ~~shall meet at least once a month but may meet more frequently if~~
 591 ~~necessary.~~

592 ~~(6)-(8) An ombudsman~~ A member of a local council shall
 593 receive no compensation but ~~may~~ shall, with approval from the
 594 state ombudsman, be reimbursed for travel expenses ~~both within~~
 595 ~~and outside the jurisdiction of the local council~~ in accordance
 596 with ~~the provisions of~~ s. 112.061.

597 ~~(7)-(9) The representatives of the office~~ local councils
 598 are authorized to call upon appropriate state agencies ~~of state~~
 599 ~~government~~ for ~~such~~ professional assistance as ~~may be~~ needed in
 600 the discharge of their duties, and such. ~~All~~ state agencies
 601 shall cooperate ~~with the local councils~~ in providing requested
 602 information and agency representation ~~at council meetings~~.

603 Section 7. Section 400.0070, Florida Statutes, is amended
 604 to read:

605 400.0070 Conflicts of interest.-

606 (1) A representative of the office ~~The ombudsman~~ shall
 607 not:

608 (a) Have a direct involvement in the licensing or
 609 certification of, or an ownership or investment interest in, a
 610 long-term care facility or a provider of a long-term care
 611 service.

612 (b) Be employed by, or participate in the management of, a
 613 long-term care facility.

614 (c) Receive, or have a right to receive, directly or
 615 indirectly, remuneration, in cash or in kind, under a
 616 compensation agreement with the owner or operator of a long-term

617 care facility.

618 (2) Each representative ~~employee~~ of the office, ~~each state~~
 619 ~~council member, and each local council member~~ shall certify that
 620 he or she has no conflict of interest.

621 (3) The department, in consultation with the state
 622 ombudsman, shall define by rule:

623 (a) Situations that constitute an individual's ~~a person~~
 624 having a conflict of interest that could materially affect the
 625 objectivity or capacity of the individual ~~a person~~ to serve as a
 626 representative ~~on an ombudsman council, or as an employee of the~~
 627 ~~office, while carrying out the purposes of the State Long-Term~~
 628 ~~Care Ombudsman Program as specified in this part.~~

629 (b) The procedure by which an individual ~~a person~~ listed
 630 in subsection (2) shall certify that he or she has no conflict
 631 of interest.

632 Section 8. Section 400.0071, Florida Statutes, is amended
 633 to read:

634 400.0071 State ~~Long-Term Care~~ ombudsman program complaint
 635 procedures.—The department, in consultation with the state
 636 ombudsman, shall adopt rules implementing state and local
 637 complaint procedures. The rules must include procedures for
 638 receiving, investigating, and resolving complaints concerning
 639 the health, safety, welfare, and rights of residents;

640 ~~(1) Receiving complaints against a long-term care facility~~
 641 ~~or an employee of a long-term care facility.~~

642 ~~(2) Conducting investigations of a long-term care facility~~
 643 ~~or an employee of a long-term care facility subsequent to~~
 644 ~~receiving a complaint.~~

645 ~~(3) Conducting onsite administrative assessments of long-~~
 646 ~~term care facilities.~~

647 Section 9. Section 400.0073, Florida Statutes, is amended
 648 to read:

649 400.0073 Complaint ~~State and local ombudsman council~~
 650 ~~investigations.-~~

651 (1) A representative of the office ~~local council~~ shall
 652 identify and investigate, ~~within a reasonable time after a~~
 653 ~~complaint is made,~~ any complaint made by or on behalf of a
 654 resident that, ~~a representative of a resident, or any other~~
 655 ~~credible source based on an action or omission by an~~
 656 ~~administrator, an employee, or a representative of a long-term~~
 657 ~~care facility~~ which might be:

- 658 (a) Contrary to law;
- 659 (b) Unreasonable, unfair, oppressive, or unnecessarily
 660 discriminatory, even though in accordance with law;
- 661 (c) Based on a mistake of fact;
- 662 (d) Based on improper or irrelevant grounds;
- 663 (e) Unaccompanied by an adequate statement of reasons;
- 664 (f) Performed in an inefficient manner; or
- 665 (g) Otherwise adversely affecting the health, safety,
 666 welfare, or rights of a resident.

667 ~~(2) In an investigation, both the state and local councils~~
 668 ~~have the authority to hold public hearings.~~

669 ~~(3) Subsequent to an appeal from a local council, the~~
 670 ~~state council may investigate any complaint received by the~~
 671 ~~local council involving a long-term care facility or a resident.~~

672 (2)-(4) If a representative of the office ~~the ombudsman or~~

HB 1015

2013

673 ~~any state or local council member~~ is not allowed to enter a
674 long-term care facility, the administrator of the facility shall
675 be considered to have interfered with a representative of the
676 office, ~~the state council, or the local council~~ in the
677 performance of official duties as described in s. 400.0083(1)
678 and to have committed a violation of this part. The
679 representative of the office ~~ombudsman~~ shall report a facility's
680 refusal to allow entry to the facility to the state ombudsman or
681 designee, who shall then report the incident to the agency, and
682 the agency shall record the report and take it into
683 consideration when determining actions allowable under s.
684 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
685 429.71.

686 Section 10. Section 400.0074, Florida Statutes, is amended
687 to read:

688 400.0074 ~~Local ombudsman council~~ Onsite administrative
689 assessments.—

690 (1) Representatives of the office must ~~In addition to any~~
691 ~~specific investigation conducted pursuant to a complaint, the~~
692 ~~local council shall~~ conduct, at least annually, an onsite
693 administrative assessment of each nursing home, assisted living
694 facility, and adult family-care home ~~within its jurisdiction.~~
695 This administrative assessment must be resident-centered and
696 must ~~shall~~ focus on factors affecting the rights, health,
697 safety, and welfare of the residents. ~~Each local council is~~
698 ~~encouraged to conduct a similar onsite administrative assessment~~
699 ~~of each additional long-term care facility within its~~
700 ~~jurisdiction.~~

HB 1015

2013

701 (2) An onsite administrative assessment is ~~conducted by a~~
702 ~~local council shall be~~ subject to the following conditions:

703 (a) To the extent possible and reasonable, the
704 administrative assessment ~~assessments~~ shall not duplicate the
705 efforts of ~~the agency~~ surveys and inspections conducted by state
706 agencies in long-term care facilities ~~under part II of this~~
707 ~~chapter and parts I and II of chapter 429.~~

708 (b) An administrative assessment shall be conducted at a
709 time and for a duration necessary to produce the information
710 required to complete the assessment ~~carry out the duties of the~~
711 ~~local council.~~

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

715 (d) A representative of the office ~~local council member~~
716 ~~physically~~ present for the administrative assessment must ~~shall~~
717 identify himself or herself to the administrator or designee ~~and~~
718 ~~cite the specific statutory authority for his or her assessment~~
719 of the facility.

720 (e) An administrative assessment may not unreasonably
721 interfere with the programs and activities of residents.

722 (f) A representative of the office ~~local council member~~
723 may not enter a single-family residential unit within a long-
724 term care facility during an administrative assessment without
725 the permission of the resident or the representative of the
726 resident.

727 (g) An administrative assessment must be conducted in a
728 manner that will impose no unreasonable burden on a long-term

HB 1015

2013

729 care facility.

730 ~~(3) Regardless of jurisdiction, the ombudsman may~~
731 ~~authorize a state or local council member to assist another~~
732 ~~local council to perform the administrative assessments~~
733 ~~described in this section.~~

734 ~~(3)-(4)~~ An onsite administrative assessment may not be
735 accomplished by forcible entry. However, if a representative of
736 the office ombudsman or a state or local council member is not
737 allowed to enter a long-term care facility, the administrator of
738 the facility shall be considered to have interfered with a
739 representative of the office, ~~the state council, or the local~~
740 ~~council~~ in the performance of official duties as described in s.
741 400.0083(1) and to have committed a violation of this part. The
742 representative of the office ombudsman shall report the refusal
743 by a facility to allow entry to the state ombudsman or designee,
744 who shall then report the incident to the agency, and the agency
745 shall record the report and take it into consideration when
746 determining actions allowable under s. 400.102, s. 400.121, s.
747 429.14, s. 429.19, s. 429.69, or s. 429.71.

748 (4) The department, in consultation with the state
749 ombudsman, may adopt rules implementing procedures for
750 conducting onsite administrative assessments of long-term care
751 facilities.

752 Section 11. Section 400.0075, Florida Statutes, is amended
753 to read:

754 400.0075 Complaint notification and resolution
755 procedures.—

756 (1) (a) Any complaint ~~or problem~~ verified by a

HB 1015

2013

757 ~~representative of the office an ombudsman council~~ as a result of
758 an investigation may ~~or onsite administrative assessment, which~~
759 ~~complaint or problem is determined to require remedial action by~~
760 ~~the local council,~~ shall be identified and brought to the
761 attention of the long-term care facility administrator subject
762 to the confidentiality provisions of s. 400.0077 in writing.

763 Upon receipt of the information ~~such document,~~ the
764 administrator, with the concurrence of the representative of the
765 office ~~local council chair,~~ shall establish target dates for
766 taking appropriate remedial action. If, by the target date, the
767 remedial action is not completed or forthcoming, the complaint
768 shall be referred to the district manager ~~local council chair~~
769 ~~may, after obtaining approval from the ombudsman and a majority~~
770 ~~of the members of the local council:~~

771 1. ~~Extend the target date if the chair has reason to~~
772 ~~believe such action would facilitate the resolution of the~~
773 ~~complaint.~~

774 2. ~~In accordance with s. 400.0077, publicize the~~
775 ~~complaint, the recommendations of the council, and the response~~
776 ~~of the long-term care facility.~~

777 3. ~~Refer the complaint to the state council.~~

778 (b) If an ombudsman determines ~~the local council chair~~
779 ~~believes~~ that the health, safety, welfare, or rights of a ~~the~~
780 resident are in imminent danger, the ombudsman must immediately
781 notify the district manager. ~~The district manager chair shall~~
782 ~~notify the ombudsman or legal advocate, who,~~ after verifying
783 that such imminent danger exists, must notify the appropriate
784 state agencies, including law enforcement, the state ombudsman,

HB 1015

2013

785 and legal advocate to ensure the protection of ~~shall seek~~
786 ~~immediate legal or administrative remedies to protect the~~
787 resident.

788 (c) If the state ombudsman or legal advocate has reason to
789 believe that the long-term care facility or an employee of the
790 facility has committed a criminal act, the state ombudsman or
791 legal advocate shall provide the local law enforcement agency
792 with the relevant information to initiate an investigation of
793 the case.

794 (2)(a) Upon referral from a district ~~local council~~, the
795 state ombudsman or designee ~~council~~ shall assume the
796 responsibility for the disposition of the complaint. If a long-
797 term care facility fails to take action to resolve or remedy the
798 ~~on a complaint by the state council~~, the state ombudsman ~~council~~
799 may, ~~after obtaining approval from the ombudsman and a majority~~
800 ~~of the state council members~~:

801 (a)1. In accordance with s. 400.0077, publicize the
802 complaint, the recommendations of the representatives of the
803 office ~~local or state council~~, and the response of the long-term
804 care facility.

805 (b)2. Recommend to the department and the agency a series
806 of facility reviews pursuant to s. 400.19, s. 429.34, or s.
807 429.67 to ensure correction and nonrecurrence of the conditions
808 that gave ~~give~~ rise to the complaint ~~complaints~~ against the a
809 long-term care facility.

810 (c)3. Recommend to the department and the agency that the
811 long-term care facility no longer receive payments under any
812 state assistance program, including Medicaid.

HB 1015

2013

813 (d)4. Recommend to the department and the agency that
814 procedures be initiated for action against ~~revocation of the~~
815 long-term care facility's license in accordance with chapter
816 120.

817 ~~(b) If the state council chair believes that the health,~~
818 ~~safety, welfare, or rights of the resident are in imminent~~
819 ~~danger, the chair shall notify the ombudsman or legal advocate,~~
820 ~~who, after verifying that such imminent danger exists, shall~~
821 ~~seek immediate legal or administrative remedies to protect the~~
822 ~~resident.~~

823 ~~(c) If the ombudsman has reason to believe that the long-~~
824 ~~term care facility or an employee of the facility has committed~~
825 ~~a criminal act, the ombudsman shall provide local law~~
826 ~~enforcement with the relevant information to initiate an~~
827 ~~investigation of the case.~~

828 Section 12. Section 400.0078, Florida Statutes, is amended
829 to read:

830 400.0078 Citizen access to state ~~Long-Term-Care~~ ombudsman
831 program services.-

832 (1) The office shall establish a statewide toll-free
833 telephone number and e-mail address for receiving complaints
834 concerning matters adversely affecting the health, safety,
835 welfare, or rights of residents.

836 (2) ~~Every resident or representative of a resident shall~~
837 ~~receive,~~ Upon admission to a long-term care facility, each
838 resident or representative of a resident must receive
839 information regarding:

840 (a) The purpose of the state ~~Long-Term-Care~~ ombudsman

841 program.~~7~~

842 (b) The statewide toll-free telephone number and e-mail
 843 address for receiving complaints.~~7~~and

844 (c) Information that retaliatory action cannot be taken
 845 against a resident for presenting grievances or for exercising
 846 any other resident rights.

847 (d) Other relevant information regarding how to contact
 848 representatives of the office ~~program.~~

849

850 Residents or their representatives must be furnished additional
 851 copies of this information upon request.

852 Section 13. Section 400.0079, Florida Statutes, is amended
 853 to read:

854 400.0079 Immunity.—

855 (1) Any person making a complaint pursuant to this part
 856 who does so in good faith shall be immune from any liability,
 857 civil or criminal, that otherwise might be incurred or imposed
 858 as a direct or indirect result of making the complaint.

859 (2) Representatives of the office and ~~The ombudsman or any~~
 860 ~~person authorized by the ombudsman to act on behalf of the~~
 861 ~~office, as well as all members of the state council and local~~
 862 ~~councils,~~ shall be immune from any liability, civil or criminal,
 863 that otherwise might be incurred or imposed during the good
 864 faith performance of official duties.

865 Section 14. Section 400.0081, Florida Statutes, is amended
 866 to read:

867 400.0081 Access to facilities, residents, and records.—

868 (1) A long-term care facility shall provide

HB 1015

2013

869 representatives of the office, ~~the state council and its~~
870 ~~members, and the local councils and their members~~ access to:

871 (a) Any portion of the long-term care facility and any
872 resident ~~as necessary to investigate or resolve a complaint~~.

873 (b) Medical and social records of a resident for review ~~as~~
874 ~~necessary to investigate or resolve a complaint~~, if:

875 1. The representative of the office has the permission of
876 the resident or the legal representative of the resident; or

877 2. The resident is unable to consent to the review and has
878 no legal representative.

879 (c) Medical and social records of the resident ~~as~~
880 ~~necessary to investigate or resolve a complaint~~, if:

881 1. A legal representative or guardian of the resident
882 refuses to give permission;

883 2. A representative of the office has reasonable cause to
884 believe that the legal representative or guardian is not acting
885 in the best interests of the resident; and

886 3. The representative of the office ~~state or local council~~
887 ~~member~~ obtains the approval of the state ombudsman.

888 (d) The administrative records, policies, and documents to
889 which residents or the general public have access.

890 (e) Upon request, copies of all licensing and
891 certification records maintained by the state with respect to a
892 long-term care facility.

893 (2) The department, in consultation with the state
894 ombudsman ~~and the state council~~, may adopt rules to establish
895 procedures to ensure access to facilities, residents, and
896 records as described in this section.

HB 1015

2013

897 Section 15. Section 400.0083, Florida Statutes, is amended
898 to read:

899 400.0083 Interference; retaliation; penalties.—

900 (1) It shall be unlawful for any person, long-term care
901 facility, or other entity to willfully interfere with a
902 representative of the office or the state council, ~~or a local~~
903 ~~council~~ in the performance of official duties.

904 (2) It shall be unlawful for any person, long-term care
905 facility, or other entity to knowingly or willfully take action
906 or retaliate against any resident, employee, or other person for
907 filing a complaint with, providing information to, or otherwise
908 cooperating with any representative of the office or the state
909 council, ~~or a local council~~.

910 (3) Any person, long-term care facility, or other entity
911 that violates this section:

912 (a) Shall be liable for damages and equitable relief as
913 determined by law.

914 (b) Commits a misdemeanor of the second degree, punishable
915 as provided in s. 775.083.

916 Section 16. Section 400.0087, Florida Statutes, is amended
917 to read:

918 400.0087 Department oversight; funding.—

919 (1) The department shall meet the costs associated with
920 the state ~~Long-Term-Care~~ ombudsman program from funds
921 appropriated to it.

922 (a) The department shall include the costs associated with
923 support of the state ~~Long-Term-Care~~ ombudsman program when
924 developing its budget requests for consideration by the Governor

HB 1015

2013

925 and submittal to the Legislature.

926 (b) The department may divert from the federal ombudsman
927 appropriation an amount equal to the department's administrative
928 cost ratio to cover the costs associated with administering the
929 state ombudsman program. The remaining allotment from the Older
930 Americans Act program shall be expended on direct ombudsman
931 activities.

932 (2) The department shall monitor the office and, the state
933 council, ~~and the local councils~~ to ensure that each is carrying
934 out the duties delegated to it by state and federal law.

935 (3) The department is responsible for ensuring that the
936 office:

937 (a) Has the objectivity and independence required to
938 qualify it for funding under the federal Older Americans Act.

939 (b) Provides information to public and private agencies,
940 legislators, and others.

941 (c) Provides appropriate training to representatives of
942 the office ~~or of the state or local councils~~.

943 (d) Coordinates ombudsman services with Disability Rights
944 Florida ~~the Advocacy Center for Persons with Disabilities~~ and
945 with providers of legal services to residents ~~of long-term care~~
946 ~~facilities~~ in compliance with state and federal laws.

947 (4) The department shall also:

948 (a) Receive and disburse state and federal funds for
949 purposes that the state ombudsman has formulated in accordance
950 with the Older Americans Act.

951 (b) Whenever necessary, act as liaison between agencies
952 and branches of the federal and state governments and the office

HB 1015

2013

953 ~~State Long-Term Care Ombudsman Program.~~

954 Section 17. Section 400.0089, Florida Statutes, is amended
955 to read:

956 400.0089 Complaint data reports.—The office shall maintain
957 a statewide uniform reporting system to collect and analyze data
958 relating to complaints and conditions in long-term care
959 facilities and to residents for the purpose of identifying and
960 resolving significant complaints ~~problems~~. The office shall
961 publish quarterly and make readily available information
962 pertaining to the number and types of complaints received by the
963 state ~~Long-Term Care~~ ombudsman program and shall include such
964 information in the annual report required under s. 400.0065.

965 Section 18. Section 400.0091, Florida Statutes, is amended
966 to read:

967 400.0091 Training.—The state ombudsman shall ensure that
968 appropriate training is provided to all representatives
969 ~~employees of the office and to the members of the state and~~
970 ~~local councils~~.

971 (1) All representatives ~~state and local council members~~
972 ~~and employees~~ of the office shall be given a minimum of 20 hours
973 of training upon employment with the office or appointment as an
974 ombudsman. Ten approval as a state or local council member and
975 ~~10~~ hours of continuing education is required annually
976 thereafter.

977 (2) The state ombudsman shall approve the curriculum for
978 the initial and continuing education training, which must, at a
979 minimum, address:

980 (a) Resident confidentiality.

- 981 (b) Guardianships and powers of attorney.
- 982 (c) Medication administration.
- 983 (d) Care and medication of residents with dementia and
- 984 Alzheimer's disease.
- 985 (e) Accounting for residents' funds.
- 986 (f) Discharge rights and responsibilities.
- 987 (g) Cultural sensitivity.
- 988 (h) Any other topic related to residency within a long-
- 989 term care facility recommended by the secretary.

990 (3) An individual ~~No employee, officer, or representative~~
 991 ~~of the office or of the state or local councils,~~ other than the
 992 state ombudsman, may not hold himself or herself out as a
 993 representative of the office ~~State Long-Term Care Ombudsman~~
 994 ~~Program~~ or conduct any authorized program duty described in this
 995 part unless the individual ~~person~~ has received the training
 996 required by this section and has been certified by the state
 997 ombudsman as qualified to carry out ombudsman activities on
 998 behalf of the office ~~or the state or local councils.~~

999 Section 19. Subsection (4) of section 20.41, Florida
 1000 Statutes, is amended to read:

1001 20.41 Department of Elderly Affairs.—There is created a
 1002 Department of Elderly Affairs.

1003 (4) The department shall administer the Office of State
 1004 Long-Term Care Ombudsman Council, created by s. 400.0063
 1005 ~~400.0067, and the local long-term care ombudsman councils,~~
 1006 ~~created by s. 400.0069~~ and shall, as required by s. 712 of the
 1007 federal Older Americans Act of 1965, ensure that ~~both~~ the state
 1008 office operates ~~and local long-term care ombudsman councils~~

1009 | ~~operate~~ in compliance with the Older Americans Act.

1010 | Section 20. Subsections (11) through (19) of section
1011 | 400.021, Florida Statutes, are renumbered as subsections (10)
1012 | through (18), respectively, and present subsections (10) and
1013 | (18) are amended to read:

1014 | 400.021 Definitions.—When used in this part, unless the
1015 | context otherwise requires, the term:

1016 | ~~(10) "Local ombudsman council" means a local long-term~~
1017 | ~~care ombudsman council established pursuant to s. 400.0069,~~
1018 | ~~located within the Older Americans Act planning and service~~
1019 | ~~areas.~~

1020 | (17)~~(18)~~ "State ombudsman program ~~council~~" means the
1021 | Office of State Long-Term Care Ombudsman Council established
1022 | pursuant to s. 400.0063 ~~400.0067~~.

1023 | Section 21. Paragraph (c) of subsection (1) and
1024 | subsections (2) and (3) of section 400.022, Florida Statutes,
1025 | are amended to read:

1026 | 400.022 Residents' rights.—

1027 | (1) All licensees of nursing home facilities shall adopt
1028 | and make public a statement of the rights and responsibilities
1029 | of the residents of such facilities and shall treat such
1030 | residents in accordance with the provisions of that statement.
1031 | The statement shall assure each resident the following:

1032 | (c) Any entity or individual that provides health, social,
1033 | legal, or other services to a resident has the right to have
1034 | reasonable access to the resident. The resident has the right to
1035 | deny or withdraw consent to access at any time by any entity or
1036 | individual. Notwithstanding the visiting policy of the facility,

HB 1015

2013

1037 | the following individuals must be permitted immediate access to
 1038 | the resident:

1039 | 1. Any representative of the federal or state government,
 1040 | including, but not limited to, representatives of the Department
 1041 | of Children and Family Services, the Department of Health, the
 1042 | Agency for Health Care Administration, the Office of the
 1043 | Attorney General, and the Department of Elderly Affairs; any law
 1044 | enforcement officer; representatives ~~members~~ of the state ~~or~~
 1045 | ~~local~~ ombudsman program ~~council~~; and the resident's individual
 1046 | physician.

1047 | 2. Subject to the resident's right to deny or withdraw
 1048 | consent, immediate family or other relatives of the resident.

1049 |
 1050 | The facility must allow representatives of the state ~~Long-Term~~
 1051 | ~~Care~~ ombudsman program ~~Council~~ to examine a resident's clinical
 1052 | records with the permission of the resident or the resident's
 1053 | legal representative and consistent with state law.

1054 | (2) The licensee for each nursing home shall orally inform
 1055 | the resident of the resident's rights and provide a copy of the
 1056 | statement required by subsection (1) to each resident or the
 1057 | resident's legal representative at or before the resident's
 1058 | admission to a facility. The licensee shall provide a copy of
 1059 | the resident's rights to each staff member of the facility. Each
 1060 | such licensee shall prepare a written plan and provide
 1061 | appropriate staff training to implement ~~the provisions of~~ this
 1062 | section. The written statement of rights must include a
 1063 | statement that a resident may file a complaint with the agency
 1064 | or state ~~local~~ ombudsman program ~~council~~. The statement must be

HB 1015

2013

1065 in boldfaced type and shall include the ~~name, address, and~~
 1066 telephone number and e-mail address of the state ~~numbers of the~~
 1067 ~~local~~ ombudsman program council and the telephone number of the
 1068 central abuse hotline where complaints may be lodged.

1069 (3) Any violation of the resident's rights set forth in
 1070 this section shall constitute grounds for action by the agency
 1071 under ~~the provisions of~~ s. 400.102, s. 400.121, or part II of
 1072 chapter 408. In order to determine whether the licensee is
 1073 adequately protecting residents' rights, the licensure
 1074 inspection of the facility shall include private informal
 1075 conversations with a sample of residents to discuss residents'
 1076 experiences within the facility with respect to rights specified
 1077 in this section and general compliance with standards, and
 1078 consultation with the state ombudsman program council ~~in the~~
 1079 ~~local planning and service area of the Department of Elderly~~
 1080 ~~Affairs in which the nursing home is located.~~

1081 Section 22. Subsections (8) and (9) and (11) through (14)
 1082 of section 400.0255, Florida Statutes, are amended to read:

1083 400.0255 Resident transfer or discharge; requirements and
 1084 procedures; hearings.—

1085 (8) The notice required by subsection (7) must be in
 1086 writing and must contain all information required by state and
 1087 federal law, rules, or regulations applicable to Medicaid or
 1088 Medicare cases. The agency shall develop a standard document to
 1089 be used by all facilities licensed under this part for purposes
 1090 of notifying residents of a discharge or transfer. Such document
 1091 must include a means for a resident to request the state local
 1092 ~~long-term care~~ ombudsman program council to review the notice

HB 1015

2013

1093 and request information about or assistance with initiating a
1094 fair hearing with the department's Office of Appeals Hearings.
1095 In addition to any other pertinent information included, the
1096 form shall specify the reason allowed under federal or state law
1097 that the resident is being discharged or transferred, with an
1098 explanation to support this action. Further, the form shall
1099 state the effective date of the discharge or transfer and the
1100 location to which the resident is being discharged or
1101 transferred. The form shall clearly describe the resident's
1102 appeal rights and the procedures for filing an appeal, including
1103 the right to request the state ~~local~~ ombudsman program ~~council~~
1104 to review the notice of discharge or transfer. A copy of the
1105 notice must be placed in the resident's clinical record, and a
1106 copy must be transmitted to the resident's legal guardian or
1107 representative and to the state ~~local~~ ombudsman program ~~council~~
1108 within 5 business days after signature by the resident or
1109 resident designee.

1110 (9) A resident may request that the state ~~local~~ ombudsman
1111 program ~~council~~ review any notice of discharge or transfer given
1112 to the resident. When requested by a resident to review a notice
1113 of discharge or transfer, the state ~~local~~ ombudsman program
1114 ~~council~~ shall do so within 7 days after receipt of the request.
1115 The nursing home administrator, or the administrator's designee,
1116 must forward the request for review contained in the notice to
1117 the state ~~local~~ ombudsman program ~~council~~ within 24 hours after
1118 such request is submitted. Failure to forward the request within
1119 24 hours after the request is submitted shall toll the running
1120 of the 30-day advance notice period until the request has been

HB 1015

2013

1121 forwarded.

1122 (11) Notwithstanding paragraph (10)(b), an emergency
1123 discharge or transfer may be implemented as necessary pursuant
1124 to state or federal law during the period of time after the
1125 notice is given and before the time a hearing decision is
1126 rendered. Notice of an emergency discharge or transfer to the
1127 resident, the resident's legal guardian or representative, and
1128 the state ~~local~~ ombudsman program ~~council~~ if requested pursuant
1129 to subsection (9) must be by telephone or in person. This notice
1130 shall be given before the transfer, if possible, or as soon
1131 thereafter as practicable. A representative of the state ~~local~~
1132 ombudsman program ~~council~~ conducting a review under this
1133 subsection shall do so within 24 hours after receipt of the
1134 request. The resident's file must be documented to show who was
1135 contacted, whether the contact was by telephone or in person,
1136 and the date and time of the contact. If the notice is not given
1137 in writing, written notice meeting the requirements of
1138 subsection (8) must be given the next working day.

1139 (12) After receipt of any notice required under this
1140 section, the state ~~local~~ ombudsman program ~~council~~ may request a
1141 private informal conversation with a resident to whom the notice
1142 is directed, and, if known, a family member or the resident's
1143 legal guardian or designee, to ensure that the facility is
1144 proceeding with the discharge or transfer in accordance with ~~the~~
1145 ~~requirements of~~ this section. If requested, the state ~~local~~
1146 ombudsman program ~~council~~ shall assist the resident with filing
1147 an appeal of the proposed discharge or transfer.

1148 (13) The following persons must be present at all hearings

1149 authorized under this section:

1150 (a) The resident, or the resident's legal representative
1151 or designee.

1152 (b) The facility administrator, or the facility's legal
1153 representative or designee.

1154
1155 A representative of the state ~~local long-term care~~ ombudsman
1156 program council may be present at all hearings authorized by
1157 this section.

1158 (14) In any hearing under this section, the following
1159 information concerning the parties shall be confidential and
1160 exempt from ~~the provisions of~~ s. 119.07(1):

1161 (a) Names and addresses.

1162 (b) Medical services provided.

1163 (c) Social and economic conditions or circumstances.

1164 (d) Evaluation of personal information.

1165 (e) Medical data, including diagnosis and past history of
1166 disease or disability.

1167 (f) Any information received verifying income eligibility
1168 and amount of medical assistance payments. Income information
1169 received from the Social Security Administration or the Internal
1170 Revenue Service must be safeguarded according to the
1171 requirements of the agency that furnished the data.

1172
1173 The exemption created by this subsection does not prohibit
1174 access to such information by the state ombudsman program ~~a~~
1175 ~~local long-term care ombudsman council~~ upon request, by a
1176 reviewing court if such information is required to be part of

HB 1015

2013

1177 the record upon subsequent review, or as specified in s. 24(a),
 1178 Art. I of the State Constitution.

1179 Section 23. Subsection (2) of section 400.1413, Florida
 1180 Statutes, is amended to read:

1181 400.1413 Volunteers in nursing homes.—

1182 (2) This section does not affect the activities of the
 1183 ~~state or local long-term care ombudsman program councils~~
 1184 authorized under part I.

1185 Section 24. Paragraph (d) of subsection (5) of section
 1186 400.162, Florida Statutes, is amended to read:

1187 400.162 Property and personal affairs of residents.—

1188 (5)

1189 (d) If, at any time during the period for which a license
 1190 is issued, a licensee that has not purchased a surety bond or
 1191 entered into a self-insurance agreement, as provided in
 1192 paragraphs (b) and (c), is requested to provide safekeeping for
 1193 the personal funds of a resident, the licensee shall notify the
 1194 agency of the request and make application for a surety bond or
 1195 for participation in a self-insurance agreement within 7 days
 1196 after ~~of~~ the request, exclusive of weekends and holidays. Copies
 1197 of the application, along with written documentation of related
 1198 correspondence with an insurance agency or group, shall be
 1199 maintained by the licensee for review by the agency and the
 1200 state ~~Nursing Home and Long-Term Care Facility~~ ombudsman program
 1201 ~~Council~~.

1202 Section 25. Subsections (1) and (4) of section 400.19,
 1203 Florida Statutes, are amended to read:

1204 400.19 Right of entry and inspection.—

1205 (1) In accordance with part II of chapter 408, the agency
 1206 and any duly designated officer or employee thereof or a
 1207 representative member of the state ~~Long-Term Care~~ ombudsman
 1208 program Council ~~or the local long-term care ombudsman council~~
 1209 shall have the right to enter upon and into the premises of any
 1210 facility licensed pursuant to this part, or any distinct nursing
 1211 home unit of a hospital licensed under chapter 395 or any
 1212 freestanding facility licensed under chapter 395 that provides
 1213 extended care or other long-term care services, at any
 1214 reasonable time in order to determine the state of compliance
 1215 with ~~the provisions of~~ this part, part II of chapter 408, and
 1216 applicable rules in force pursuant thereto. The agency shall,
 1217 within 60 days after receipt of a complaint made by a resident
 1218 or resident's representative, complete its investigation and
 1219 provide to the complainant its findings and resolution.

1220 (4) The agency shall conduct unannounced onsite facility
 1221 reviews following written verification of licensee noncompliance
 1222 in instances in which the state ombudsman program ~~a long-term~~
 1223 ~~care ombudsman council~~, pursuant to ss. 400.0071 and 400.0075,
 1224 has received a complaint and has documented deficiencies in
 1225 resident care or in the physical plant of the facility that
 1226 threaten the health, safety, or security of residents, or when
 1227 the agency documents through inspection that conditions in a
 1228 facility present a direct or indirect threat to the health,
 1229 safety, or security of residents. However, the agency shall
 1230 conduct unannounced onsite reviews every 3 months of each
 1231 facility while the facility has a conditional license.
 1232 Deficiencies related to physical plant do not require followup

HB 1015

2013

1233 reviews after the agency has determined that correction of the
 1234 deficiency has been accomplished and that the correction is of
 1235 the nature that continued compliance can be reasonably expected.

1236 Section 26. Subsection (1) of section 400.191, Florida
 1237 Statutes, is amended to read:

1238 400.191 Availability, distribution, and posting of reports
 1239 and records.—

1240 (1) The agency shall provide information to the public
 1241 about all of the licensed nursing home facilities operating in
 1242 the state. The agency shall, within 60 days after a licensure
 1243 inspection visit or within 30 days after any interim visit to a
 1244 facility, send copies of the inspection reports to the state
 1245 ~~local long-term care~~ ombudsman program ~~council~~, the agency's
 1246 local office, and a public library or the county seat for the
 1247 county in which the facility is located. The agency may provide
 1248 electronic access to inspection reports as a substitute for
 1249 sending copies.

1250 Section 27. Subsection (6) and paragraph (c) of subsection
 1251 (7) of section 400.23, Florida Statutes, is amended to read:

1252 400.23 Rules; evaluation and deficiencies; licensure
 1253 status.—

1254 (6) Before ~~Prior to~~ conducting a survey of the facility,
 1255 the survey team shall obtain a copy of the state ~~local long-term~~
 1256 ~~care~~ ombudsman program ~~council~~ report on the facility. Problems
 1257 noted in the report shall be incorporated into and followed up
 1258 through the agency's inspection process. This procedure does not
 1259 preclude the state ~~local long-term care~~ ombudsman program
 1260 ~~council~~ from requesting the agency to conduct a followup visit

1261 to the facility.

1262 (7) The agency shall, at least every 15 months, evaluate
 1263 all nursing home facilities and make a determination as to the
 1264 degree of compliance by each licensee with the established rules
 1265 adopted under this part as a basis for assigning a licensure
 1266 status to that facility. The agency shall base its evaluation on
 1267 the most recent inspection report, taking into consideration
 1268 findings from other official reports, surveys, interviews,
 1269 investigations, and inspections. In addition to license
 1270 categories authorized under part II of chapter 408, the agency
 1271 shall assign a licensure status of standard or conditional to
 1272 each nursing home.

1273 (c) In evaluating the overall quality of care and services
 1274 and determining whether the facility will receive a conditional
 1275 or standard license, the agency shall consider the needs and
 1276 limitations of residents in the facility and the results of
 1277 interviews and surveys of a representative sampling of
 1278 residents, families of residents, representatives of the state
 1279 ~~ombudsman program council members in the planning and service~~
 1280 ~~area in which the facility is located~~, guardians of residents,
 1281 and staff of the nursing home facility.

1282 Section 28. Paragraph (a) of subsection (3), paragraph (f)
 1283 of subsection (5), and subsection (6) of section 400.235,
 1284 Florida Statutes, are amended to read:

1285 400.235 Nursing home quality and licensure status; Gold
 1286 Seal Program.—

1287 (3) (a) The Gold Seal Program shall be developed and
 1288 implemented by the Governor's Panel on Excellence in Long-Term

1289 Care which shall operate under the authority of the Executive
 1290 Office of the Governor. The panel shall be composed of three
 1291 persons appointed by the Governor, to include a consumer
 1292 advocate for senior citizens and two persons with expertise in
 1293 the fields of quality management, service delivery excellence,
 1294 or public sector accountability; three persons appointed by the
 1295 Secretary of Elderly Affairs, to include an active member of a
 1296 nursing facility family and resident care council and a member
 1297 of the University Consortium on Aging; a representative of the
 1298 Office of State Long-Term Care Ombudsman; one person appointed
 1299 by the Florida Life Care Residents Association; one person
 1300 appointed by the State Surgeon General; two persons appointed by
 1301 the Secretary of Health Care Administration; one person
 1302 appointed by the Florida Association of Homes for the Aging; and
 1303 one person appointed by the Florida Health Care Association.
 1304 Vacancies on the panel shall be filled in the same manner as the
 1305 original appointments.

1306 (5) Facilities must meet the following additional criteria
 1307 for recognition as a Gold Seal Program facility:

1308 (f) Evidence an outstanding record regarding the number
 1309 and types of substantiated complaints reported to the Office of
 1310 State Long-Term Care Ombudsman ~~Council~~ within the 30 months
 1311 preceding application for the program.

1312
 1313 A facility assigned a conditional licensure status may not
 1314 qualify for consideration for the Gold Seal Program until after
 1315 it has operated for 30 months with no class I or class II
 1316 deficiencies and has completed a regularly scheduled relicensure

1317 survey.

1318 (6) The agency, nursing facility industry organizations,
 1319 consumers, Office of State Long-Term Care Ombudsman Council, and
 1320 members of the community may recommend to the Governor
 1321 facilities that meet the established criteria for consideration
 1322 for and award of the Gold Seal. The panel shall review nominees
 1323 and make a recommendation to the Governor for final approval and
 1324 award. The decision of the Governor is final and is not subject
 1325 to appeal.

1326 Section 29. Paragraph (a) of subsection (1) of section
 1327 415.1034, Florida Statutes, is amended to read:

1328 415.1034 Mandatory reporting of abuse, neglect, or
 1329 exploitation of vulnerable adults; mandatory reports of death.—

1330 (1) MANDATORY REPORTING.—

1331 (a) Any person, including, but not limited to, any:

1332 1. Physician, osteopathic physician, medical examiner,
 1333 chiropractic physician, nurse, paramedic, emergency medical
 1334 technician, or hospital personnel engaged in the admission,
 1335 examination, care, or treatment of vulnerable adults;

1336 2. Health professional or mental health professional other
 1337 than one listed in subparagraph 1.;

1338 3. Practitioner who relies solely on spiritual means for
 1339 healing;

1340 4. Nursing home staff; assisted living facility staff;
 1341 adult day care center staff; adult family-care home staff;
 1342 social worker; or other professional adult care, residential, or
 1343 institutional staff;

1344 5. State, county, or municipal criminal justice employee

1345 or law enforcement officer;

1346 6. ~~An~~ Employee of the Department of Business and
 1347 Professional Regulation conducting inspections of public lodging
 1348 establishments under s. 509.032;

1349 7. Florida advocacy council member or representative of
 1350 the Office of State Long-Term Care Ombudsman ~~council member~~; or

1351 8. Bank, savings and loan, or credit union officer,
 1352 trustee, or employee,

1353

1354 who knows, or has reasonable cause to suspect, that a vulnerable
 1355 adult has been or is being abused, neglected, or exploited shall
 1356 immediately report such knowledge or suspicion to the central
 1357 abuse hotline.

1358 Section 30. Subsection (1) of section 415.104, Florida
 1359 Statutes, is amended to read:

1360 415.104 Protective investigations of cases of abuse,
 1361 neglect, or exploitation of vulnerable adults; transmittal of
 1362 records to state attorney.—

1363 (1) The department shall, upon receipt of a report
 1364 alleging abuse, neglect, or exploitation of a vulnerable adult,
 1365 begin within 24 hours a protective investigation of the facts
 1366 alleged therein. If a caregiver refuses to allow the department
 1367 to begin a protective investigation or interferes with the
 1368 conduct of such an investigation, the appropriate law
 1369 enforcement agency shall be contacted for assistance. If, during
 1370 the course of the investigation, the department has reason to
 1371 believe that the abuse, neglect, or exploitation is perpetrated
 1372 by a second party, the appropriate law enforcement agency and

HB 1015

2013

1373 state attorney shall be orally notified. The department and the
1374 law enforcement agency shall cooperate to allow the criminal
1375 investigation to proceed concurrently with, and not be hindered
1376 by, the protective investigation. The department shall make a
1377 preliminary written report to the law enforcement agencies
1378 within 5 working days after the oral report. The department
1379 shall, within 24 hours after receipt of the report, notify the
1380 appropriate Florida local advocacy council, or state long-term
1381 ~~care~~ ombudsman program council, when appropriate, that an
1382 alleged abuse, neglect, or exploitation perpetrated by a second
1383 party has occurred. Notice to the Florida local advocacy council
1384 or state long-term care ~~ombudsman program council~~ may be
1385 accomplished orally or in writing and shall include the name and
1386 location of the vulnerable adult alleged to have been abused,
1387 neglected, or exploited and the nature of the report.

1388 Section 31. Subsection (8) of section 415.1055, Florida
1389 Statutes, is amended to read:

1390 415.1055 Notification to administrative entities.—

1391 (8) At the conclusion of a protective investigation at a
1392 facility, the department shall notify either the Florida local
1393 advocacy council or state long-term care ~~ombudsman program~~
1394 ~~council~~ of the results of the investigation. This notification
1395 must be in writing.

1396 Section 32. Subsection (2) of section 415.106, Florida
1397 Statutes, is amended to read:

1398 415.106 Cooperation by the department and criminal justice
1399 and other agencies.—

1400 (2) To ensure coordination, communication, and cooperation

1401 with the investigation of abuse, neglect, or exploitation of
 1402 vulnerable adults, the department shall develop and maintain
 1403 interprogram agreements or operational procedures among
 1404 appropriate departmental programs and the Office of State Long-
 1405 Term Care Ombudsman Council, the Florida Statewide Advocacy
 1406 Council, and other agencies that provide services to vulnerable
 1407 adults. These agreements or procedures must cover such subjects
 1408 as the appropriate roles and responsibilities of the department
 1409 in identifying and responding to reports of abuse, neglect, or
 1410 exploitation of vulnerable adults; the provision of services;
 1411 and related coordinated activities.

1412 Section 33. Paragraph (g) of subsection (3) of section
 1413 415.107, Florida Statutes, is amended to read:

1414 415.107 Confidentiality of reports and records.—

1415 (3) Access to all records, excluding the name of the
 1416 reporter which shall be released only as provided in subsection
 1417 (6), shall be granted only to the following persons, officials,
 1418 and agencies:

1419 (g) Any appropriate official of the Florida advocacy
 1420 council or state long-term-care ombudsman program council
 1421 investigating a report of known or suspected abuse, neglect, or
 1422 exploitation of a vulnerable adult.

1423 Section 34. Subsection (20) of section 429.02, Florida
 1424 Statutes, is amended to read:

1425 429.02 Definitions.—When used in this part, the term:

1426 (20) "Resident's representative or designee" means a
 1427 person other than the owner, or an agent or employee of the
 1428 facility, designated in writing by the resident, if legally

1429 competent, to receive notice of changes in the contract executed
 1430 pursuant to s. 429.24; to receive notice of and to participate
 1431 in meetings between the resident and the facility owner,
 1432 administrator, or staff concerning the rights of the resident;
 1433 to assist the resident in contacting the state ombudsman program
 1434 ~~council~~ if the resident has a complaint against the facility; or
 1435 to bring legal action on behalf of the resident pursuant to s.
 1436 429.29.

1437 Section 35. Paragraph (b) of subsection (3) of section
 1438 429.07, Florida Statutes, is amended to read:

1439 429.07 License required; fee.—

1440 (3) In addition to the requirements of s. 408.806, each
 1441 license granted by the agency must state the type of care for
 1442 which the license is granted. Licenses shall be issued for one
 1443 or more of the following categories of care: standard, extended
 1444 congregate care, limited nursing services, or limited mental
 1445 health.

1446 (b) An extended congregate care license shall be issued to
 1447 facilities providing, directly or through contract, services
 1448 beyond those authorized in paragraph (a), including services
 1449 performed by persons licensed under part I of chapter 464 and
 1450 supportive services, as defined by rule, to persons who would
 1451 otherwise be disqualified from continued residence in a facility
 1452 licensed under this part.

1453 1. In order for extended congregate care services to be
 1454 provided, the agency must first determine that all requirements
 1455 established in law and rule are met and must specifically
 1456 designate, on the facility's license, that such services may be

1457 provided and whether the designation applies to all or part of
1458 the facility. Such designation may be made at the time of
1459 initial licensure or relicensure, or upon request in writing by
1460 a licensee under this part and part II of chapter 408. The
1461 notification of approval or the denial of the request shall be
1462 made in accordance with part II of chapter 408. Existing
1463 facilities qualifying to provide extended congregate care
1464 services must have maintained a standard license and may not
1465 have been subject to administrative sanctions during the
1466 previous 2 years, or since initial licensure if the facility has
1467 been licensed for less than 2 years, for any of the following
1468 reasons:

- 1469 a. A class I or class II violation;
- 1470 b. Three or more repeat or recurring class III violations
1471 of identical or similar resident care standards from which a
1472 pattern of noncompliance is found by the agency;
- 1473 c. Three or more class III violations that were not
1474 corrected in accordance with the corrective action plan approved
1475 by the agency;
- 1476 d. Violation of resident care standards which results in
1477 requiring the facility to employ the services of a consultant
1478 pharmacist or consultant dietitian;
- 1479 e. Denial, suspension, or revocation of a license for
1480 another facility licensed under this part in which the applicant
1481 for an extended congregate care license has at least 25 percent
1482 ownership interest; or
- 1483 f. Imposition of a moratorium pursuant to this part or
1484 part II of chapter 408 or initiation of injunctive proceedings.

HB 1015

2013

1485 2. A facility that is licensed to provide extended
1486 congregate care services shall maintain a written progress
1487 report on each person who receives services which describes the
1488 type, amount, duration, scope, and outcome of services that are
1489 rendered and the general status of the resident's health. A
1490 registered nurse, or appropriate designee, representing the
1491 agency shall visit the facility at least quarterly to monitor
1492 residents who are receiving extended congregate care services
1493 and to determine whether ~~if~~ the facility is in compliance with
1494 this part, part II of chapter 408, and relevant rules. One of
1495 the visits may be in conjunction with the regular survey. The
1496 monitoring visits may be provided through contractual
1497 arrangements with appropriate community agencies. A registered
1498 nurse shall serve as part of the team that inspects the
1499 facility. The agency may waive one of the required yearly
1500 monitoring visits for a facility that has been licensed for at
1501 least 24 months to provide extended congregate care services,
1502 if, during the inspection, the registered nurse determines that
1503 extended congregate care services are being provided
1504 appropriately, and if the facility has no class I or class II
1505 violations and no uncorrected class III violations. The agency
1506 must first consult with the state ~~long-term care~~ ombudsman
1507 program council ~~council~~ for the area in which the facility is located to
1508 determine whether ~~if~~ any complaints have been made and
1509 substantiated about the quality of services or care. The agency
1510 may not waive one of the required yearly monitoring visits if
1511 complaints have been made and substantiated.

1512 3. A facility that is licensed to provide extended

HB 1015

2013

1513 | congregate care services must:

1514 | a. Demonstrate the capability to meet unanticipated
1515 | resident service needs.

1516 | b. Offer a physical environment that promotes a homelike
1517 | setting, provides for resident privacy, promotes resident
1518 | independence, and allows sufficient congregate space as defined
1519 | by rule.

1520 | c. Have sufficient staff available, taking into account
1521 | the physical plant and firesafety features of the building, to
1522 | assist with the evacuation of residents in an emergency.

1523 | d. Adopt and follow policies and procedures that maximize
1524 | resident independence, dignity, choice, and decisionmaking to
1525 | permit residents to age in place, so that moves due to changes
1526 | in functional status are minimized or avoided.

1527 | e. Allow residents or, if applicable, a resident's
1528 | representative, designee, surrogate, guardian, or attorney in
1529 | fact to make a variety of personal choices, participate in
1530 | developing service plans, and share responsibility in
1531 | decisionmaking.

1532 | f. Implement the concept of managed risk.

1533 | g. Provide, directly or through contract, the services of
1534 | a person licensed under part I of chapter 464.

1535 | h. In addition to the training mandated in s. 429.52,
1536 | provide specialized training as defined by rule for facility
1537 | staff.

1538 | 4. A facility that is licensed to provide extended
1539 | congregate care services is exempt from the criteria for
1540 | continued residency set forth in rules adopted under s. 429.41.

HB 1015

2013

1541 A licensed facility must adopt its own requirements within
1542 guidelines for continued residency set forth by rule. However,
1543 the facility may not serve residents who require 24-hour nursing
1544 supervision. A licensed facility that provides extended
1545 congregate care services must also provide each resident with a
1546 written copy of facility policies governing admission and
1547 retention.

1548 5. The primary purpose of extended congregate care
1549 services is to allow residents, as they become more impaired,
1550 the option of remaining in a familiar setting from which they
1551 would otherwise be disqualified for continued residency. A
1552 facility licensed to provide extended congregate care services
1553 may also admit an individual who exceeds the admission criteria
1554 for a facility with a standard license, if the individual is
1555 determined appropriate for admission to the extended congregate
1556 care facility.

1557 6. Before the admission of an individual to a facility
1558 licensed to provide extended congregate care services, the
1559 individual must undergo a medical examination as provided in s.
1560 429.26(4) and the facility must develop a preliminary service
1561 plan for the individual.

1562 7. When a facility can no longer provide or arrange for
1563 services in accordance with the resident's service plan and
1564 needs and the facility's policy, the facility shall make
1565 arrangements for relocating the person in accordance with s.
1566 429.28(1)(k).

1567 8. Failure to provide extended congregate care services
1568 may result in denial of extended congregate care license

HB 1015

2013

1569 renewal.

1570 Section 36. Subsection (9) of section 429.19, Florida
 1571 Statutes, is amended to read:

1572 429.19 Violations; imposition of administrative fines;
 1573 grounds.—

1574 (9) The agency shall develop and disseminate an annual
 1575 list of all facilities sanctioned or fined for violations of
 1576 state standards, the number and class of violations involved,
 1577 the penalties imposed, and the current status of cases. The list
 1578 shall be disseminated, at no charge, to the Department of
 1579 Elderly Affairs, the Department of Health, the Department of
 1580 Children and Family Services, the Agency for Persons with
 1581 Disabilities, the area agencies on aging, the Florida Statewide
 1582 Advocacy Council, and the state ~~and local~~ ombudsman program
 1583 ~~councils~~. The Department of Children and Family Services shall
 1584 disseminate the list to service providers under contract to the
 1585 department who are responsible for referring persons to a
 1586 facility for residency. The agency may charge a fee commensurate
 1587 with the cost of printing and postage to other interested
 1588 parties requesting a copy of this list. This information may be
 1589 provided electronically or through the agency's Internet site.

1590 Section 37. Subsection (8) of section 429.26, Florida
 1591 Statutes, is amended to read:

1592 429.26 Appropriateness of placements; examinations of
 1593 residents.—

1594 (8) The Department of Children and Family Services may
 1595 require an examination for supplemental security income and
 1596 optional state supplementation recipients residing in facilities

HB 1015

2013

1597 at any time and shall provide the examination whenever a
1598 resident's condition requires it. Any facility administrator;
1599 personnel of the agency, the department, or the Department of
1600 Children and Family Services; or representative of the state
1601 ~~long-term care ombudsman program council member~~ who believes a
1602 resident needs to be evaluated shall notify the resident's case
1603 manager, who shall take appropriate action. A report of the
1604 examination findings shall be provided to the resident's case
1605 manager and the facility administrator to help the administrator
1606 meet his or her responsibilities under subsection (1).

1607 Section 38. Subsection (2) and paragraph (b) of subsection
1608 (3) of section 429.28, Florida Statutes, are amended to read:

1609 429.28 Resident bill of rights.—

1610 (2) The administrator of a facility shall ensure that a
1611 written notice of the rights, obligations, and prohibitions set
1612 forth in this part is posted in a prominent place in each
1613 facility and read or explained to residents who cannot read.
1614 This notice shall include the statewide toll-free telephone
1615 number and e-mail address ~~name, address, and telephone numbers~~
1616 of the state local ~~ombudsman program council~~ and central abuse
1617 hotline and, when applicable, the Advocacy Center for Persons
1618 with Disabilities, Inc., and the Florida local advocacy council,
1619 where complaints may be lodged. The facility must ensure a
1620 resident's access to a telephone to call the state local
1621 ~~ombudsman program council~~, central abuse hotline, Advocacy
1622 Center for Persons with Disabilities, Inc., and the Florida
1623 local advocacy council.

1624 (3)

1625 (b) In order to determine whether the facility is
 1626 adequately protecting residents' rights, the biennial survey
 1627 shall include private informal conversations with a sample of
 1628 residents and consultation with the state ombudsman program
 1629 ~~council~~ in the planning and service area in which the facility
 1630 is located to discuss residents' experiences within the
 1631 facility.

1632 Section 39. Section 429.34, Florida Statutes, is amended
 1633 to read:

1634 429.34 Right of entry and inspection.—In addition to the
 1635 requirements of s. 408.811, any duly designated officer or
 1636 employee of the department, the Department of Children and
 1637 Families ~~Family Services~~, the Medicaid Fraud Control Unit of the
 1638 Office of the Attorney General, the state or local fire marshal,
 1639 or a representative member of the state ~~or local long-term care~~
 1640 ombudsman program council shall have the right to enter
 1641 unannounced upon and into the premises of any facility licensed
 1642 pursuant to this part in order to determine the state of
 1643 compliance with ~~the provisions of~~ this part, part II of chapter
 1644 408, and applicable rules. Data collected by the state ~~or local~~
 1645 ~~long-term care~~ ombudsman program councils or the state or local
 1646 advocacy councils may be used by the agency in investigations
 1647 involving violations of regulatory standards.

1648 Section 40. Subsection (2) of section 429.35, Florida
 1649 Statutes, is amended to read:

1650 429.35 Maintenance of records; reports.—

1651 (2) Within 60 days after the date of the biennial
 1652 inspection visit required under s. 408.811 or within 30 days

HB 1015

2013

1653 after the date of any interim visit, the agency shall forward
 1654 the results of the inspection to the state ~~local~~ ombudsman
 1655 program council ~~in whose planning and service area, as defined~~
 1656 ~~in part II of chapter 400, the facility is located;~~ to at least
 1657 one public library or, in the absence of a public library, the
 1658 county seat in the county in which the inspected assisted living
 1659 facility is located; and, when appropriate, to the district
 1660 Adult Services and Mental Health Program Offices.

1661 Section 41. Subsection (2) of section 429.85, Florida
 1662 Statutes, is amended to read:

1663 429.85 Residents' bill of rights.—

1664 (2) The provider shall ensure that residents and their
 1665 legal representatives are made aware of the rights, obligations,
 1666 and prohibitions set forth in this part. Residents must also be
 1667 given the statewide toll-free telephone number and e-mail
 1668 address of the state ombudsman program and the telephone number
 1669 of ~~names, addresses, and telephone numbers of the local~~
 1670 ~~ombudsman council~~ and the central abuse hotline where they may
 1671 lodge complaints.

1672 Section 42. Subsection (17) of section 744.444, Florida
 1673 Statutes, is amended to read:

1674 744.444 Power of guardian without court approval.—Without
 1675 obtaining court approval, a plenary guardian of the property, or
 1676 a limited guardian of the property within the powers granted by
 1677 the order appointing the guardian or an approved annual or
 1678 amended guardianship report, may:

1679 (17) Provide confidential information about a ward that is
 1680 related to an investigation arising under part I of chapter 400

HB 1015

2013

1681 | to a representative of the local or state ombudsman program
1682 | ~~council member~~ conducting such an investigation. Any such
1683 | ombudsman shall have a duty to maintain the confidentiality of
1684 | such information.

1685 | Section 43. This act shall take effect July 1, 2013.