

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1212

INTRODUCER: Senator Soto

SUBJECT: State Ombudsman Program

DATE: April 11, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Pre-meeting
2.			HP	
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

SB 1212 revises and updates the Long-Term Care Ombudsman Program. The program is comprised of volunteer ombudsmen who investigate and resolve complaints in long-term care facilities, such as nursing homes and assisted living facilities. The ombudsmen are organized into local councils and a state council. The bill updates terminology and redefines the role of the councils. The local councils are renamed districts and the role of the state council in investigating and resolving local complaints is removed. The state council becomes an advisory council to the state ombudsman under the bill. Terminology is updated across various sections of law.

This substantially amends the following sections of the Florida Statutes: 20.41, 400.0060, 400.0061, 400.0063, 400.0065, 400.0067, 400.0069, 400.0070, 400.0071, 400.0073, 400.0074, 400.0075, 400.0078, 400.0079, 400.0081, 400.0083, 400.0087, 400.0089, 400.0091, 400.021, 400.022, 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23, 400.235, 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.07, 429.19, 429.26, 429.28, 429.34, 429.35, 429.85, and 744.444.

This bill does not have a fiscal impact to the state and has an effective date of July 1, 2013.

II. Present Situation:

Older Americans Act

The Older Americans Act (OAA) was enacted in 1965 to assist elders to lead independent, meaningful, and dignified lives in their own communities rather than in more costly residential

or nursing home settings.¹ The OAA programs are administered through area agencies on aging under the Department of Elder Affairs (DOEA). To be eligible for OAA programs, individuals must be age 60 or older. Spouses and disabled adults younger than 60 may receive services in certain circumstances. Preference is given to elders with the greatest economic or social needs, particularly low-income minority individuals. The OAA was most recently reauthorized in 2006 to supply funding for several nutrition programs and in-home and supportive services for elders. These services include:

- caregiver support;
- congregate meals and nutrition education at senior centers;
- home-delivered meals;
- homemaker and chore services;
- information and referral; and
- transportation.

Florida's Long-Term Care Ombudsman Program (LTCOP) was created in 1975 as a result of the OAA. The OAA grants a special set of residents' rights to individuals who live in long-term care facilities such as nursing homes, assisted living facilities and adult family care homes.²

Long-Term Care Ombudsman Program

In the state of Florida, a long-term care ombudsman is a volunteer who helps to improve the lives of people who live in long-term care settings like nursing homes, assisted living facilities, and adult family care homes by investigating and resolving their complaints against the facility.

As Florida's elders transition into long-term care facilities, they need a strong support system. Unfortunately, many long-term care residents do not have anyone to look out for their best interests when it comes to personal health, safety, welfare and rights. The LTCOP is made up of more than 300 volunteers who are advocates for the residents to improve their quality of life.

The LTCOP is administratively housed within DOEA. The LTCOP undertakes to discover, investigate, and determine the presence of conditions or individuals which constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. The LTCOP accomplishes these tasks by conducting investigations of complaints filed by or on behalf of residents of nursing homes, assisted living facilities, and adult family care homes and by conducting annual administrative assessments of such facilities. An administrative assessment is a resident-centered, unannounced review of conditions in the facility which have an impact on the rights, health, safety, and welfare of residents with the purpose of noting needed improvements and making recommendations to enhance the quality of life for residents.

The LTCOP is not the enforcement and regulatory oversight authority for long-term care facilities. That responsibility falls to the Agency for Health Care Administration (AHCA), which

¹ Government Program Summaries, Office of Program Policy Analysis and Governmental Accountability website, *available at* <http://www.oppaga.state.fl.us/profiles/5032/> (last visited April 9, 2013).

² Department of Elder Affairs, Florida's Long-Term Care Ombudsman Program website, *available at* <http://ombudsman.myflorida.com/index.php> (last visited April 9, 2013).

is responsible for licensing long-term care facilities. Instead, certified ombudsmen work as independent advocates, working solely on behalf of residents to mediate disputes between residents and long-term care facilities on an informal basis. The LTCOP provides residents with the opportunity to develop personal and confidential relationships with the ombudsmen and creates an environment that allows a resident to candidly voice complaints. If a complaint is verified by the ombudsman that could violate the facility's licensure or be criminal activity, the LTCOP refers the issue to the AHCA, Adult Protective Services within the Department of Children and Families (DCF), the Attorney General's Office, or other agencies as appropriate.³

III. Effect of Proposed Changes:

Section 1 amends s. 400.0060, F.S., to revise and create definitions of terms used in the ombudsman statute. Definitions for "district," "long-term care facility," "ombudsman," and "state council" are updated. The term "representative of the office" is defined to include the state ombudsman, employees, and certified ombudsmen. The term "state ombudsman" is defined as the person appointed by the secretary of the DOEA to administer the ombudsman program.

Section 2 amends s. 400.0061, F.S., which provides legislative findings and intent, to conform existing text to newly defined terms.

Section 3 amends s. 400.0063, F.S., which establishes the office of state ombudsman, to conform existing text to newly defined terms.

Section 4 amends s. 400.0065, F.S., relating to the duties of the state ombudsman, to give the state ombudsman the final authority to make appointments of individuals serving as ombudsmen; to update position titles of individuals to receive the annual ombudsman program report; and to revise terminology to conform to new definitions.

Section 5 amends s. 400.0067, F.S., relating to the State Long-Term Care Ombudsman Council, to change the council from a body that hears and resolves complaints and investigates abuse in long-term care facilities to an advisory council. The bill revises the duties of the council to include assisting in developing strategies for recruitment and retention of volunteer ombudsmen, to assist in developing long-range goals and assisting in analyzing the impact of laws and regulations on the long-term care resident population. The bill revises the council membership to include representatives of stakeholder groups as directed by the OAA Act. Current membership is made up primarily of local ombudsmen with additional appointments made by the Governor. Under the bill, the secretary of the DOEA appoints the council.

Section 6 amends s. 400.0069, F.S., relating to the local ombudsman councils. The councils are renamed as districts. The bill clarifies duties and district activities; provides for development of family councils within facilities; clarifies that ombudsmen may be allowed to serve in a different district for good cause shown; and clarifies the application, background screening, and training requirements needed to become a certified ombudsman.

³ Department of Elder Affairs, *SB 1212 2013 Legislative Bill Analysis*, (Mar. 13, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs.)

Section 7 amends s. 400.0070, F.S., relating to ombudsman conflicts of interest, to conform to newly-defined terms.

Section 8 amends s. 400.0071, F.S., relating to how ombudsmen investigate and resolve complaints. The bill separates and removes references to the administrative assessment process from the complaint process.

Section 9 amends s. 400.0073, F.S., relating to complaint investigations, to revise procedures and conform to newly-defined terms.

Section 10 amends s. 400.0074, F.S., relating to ombudsman administrative assessments of long-term care facilities, to clarify that assessments must be resident-centered. The bill moves the rulemaking authority from s. 400.0071, F.S., and conforms to newly-defined terms.

Section 11 amends s. 400.0075, F.S., relating to complaint resolution, to conform to newly-defined terms and to clarify complaint reporting procedures. The role of the state council in resolving complaints from district councils is deleted.

Section 12 revises s. 400.0078, F.S., relating to access to the ombudsmen, to add e-mail as a way to make complaints. The bill also requires long-term care facilities to notify all residents and their families upon admission that retaliation against residents making complaints to the ombudsman is prohibited by law.

Section 13 amends s. 400.0079, F.S., relating to immunity for persons making complaints, to conform to newly-defined terms.

Section 14 amends s. 400.0081, F.S., relating to ombudsman access to long-term care facilities, to conform to newly-defined terms and to delete the limitation that ombudsmen have access to residents only for investigating a complaint.

Section 15 amends s. 400.0083, F.S., relating to interference with the ombudsman, to make technical and conforming changes.

Section 16 amends s. 400.0087, F.S., relating to oversight of the ombudsman program by DOEA, to make technical and conforming changes.

Section 17 amends s. 400.0089, F.S., relating to information on ombudsman complaints, to make technical and conforming changes.

Section 18 revises s. 400.0091, F.S., relating to ombudsman training, to clarify training requirements and make conforming changes.

Sections 19 – 42 amends ss. 20.41, 400.021, 400.022, 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23, 400.235, 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.07, 429.19, 429.26, 429.28, 429.34, 429.35, 429.85, and 744.444, F.S., to conform to newly-defined terms and to make technical changes.

Section 43 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.