

By Senator Soto

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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; authorizing a representative
21 of the office to enter a facility without notice and
22 without a warrant; providing for appointment and
23 qualifications of district ombudsmen; prohibiting
24 certain individuals from serving as ombudsmen;
25 amending s. 400.0070, F.S.; providing conditions under
26 which a representative of the office could be found to
27 have a conflict of interest; amending s. 400.0071,
28 F.S.; requiring the Department of Elderly Affairs to
29 consult with the state ombudsman before adopting rules

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30 pertaining to complaint resolution; amending s.
31 400.0073, F.S.; providing procedures for investigation
32 of complaints; amending s. 400.0074, F.S.; revising
33 procedures for conducting onsite administrative
34 assessments; authorizing the department to adopt
35 rules; amending s. 400.0075, F.S.; revising complaint
36 notification and resolution procedures; amending s.
37 400.0078, F.S.; providing for a resident or
38 representative of a resident to receive additional
39 information regarding resident rights; amending s.
40 400.0079, F.S.; providing immunity from liability for
41 a representative of the office under certain
42 circumstances; amending s. 400.0081, F.S.; requiring
43 long-term care facilities to provide representatives
44 of the office with access to facilities, residents,
45 and records for certain purposes; amending s.
46 400.0083, F.S.; conforming provisions to changes made
47 by the act; amending s. 400.0087, F.S.; providing for
48 the office to coordinate ombudsman services with
49 Disability Rights Florida; amending s. 400.0089, F.S.;
50 conforming provisions to changes made by the act;
51 amending s. 400.0091, F.S.; revising training
52 requirements for representatives of the office and
53 ombudsmen; amending ss. 20.41, 400.021, 400.022,
54 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23,
55 400.235, 415.1034, 415.104, 415.1055, 415.106,
56 415.107, 429.02, 429.07, 429.19, 429.26, 429.28,
57 429.34, 429.35, 429.85, and 744.444, F.S.; conforming
58 provisions to changes made by the act; providing an

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59 effective date.

60
61 Be It Enacted by the Legislature of the State of Florida:

62
63 Section 1. Section 400.0060, Florida Statutes, is amended
64 to read:

65 400.0060 Definitions.—When used in this part, unless the
66 context clearly dictates otherwise, the term:

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

72 (2) "Agency" means the Agency for Health Care
73 Administration.

74 (3) "Department" means the Department of Elderly Affairs.

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

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

87 (6) "Office" means the Office of State Long-Term Care

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88 Ombudsman created by s. 400.0063.

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

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

97 (9)~~(8)~~ "Resident" means an individual 60 years of age or
98 older who resides in a long-term care facility.

99 (10)~~(9)~~ "Secretary" means the Secretary of Elderly Affairs.

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

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

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

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

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

111 (1) The Legislature finds that conditions in long-term care
112 facilities in this state are such that the rights, health,
113 safety, and welfare of residents are not fully ensured by rules
114 of the Department of Elderly Affairs or the Agency for Health
115 Care Administration or by the good faith of owners or operators
116 of long-term care facilities. Furthermore, there is a need for a

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

132 (2) It is the intent of the Legislature, therefore, to
 133 utilize voluntary citizen ombudsmen ~~ombudsman councils~~ under the
 134 leadership of the state ombudsman, and, through them, to operate
 135 a state ~~an~~ ombudsman program, which shall, without interference
 136 by any executive agency, undertake to discover, investigate, and
 137 determine the presence of conditions or individuals that ~~which~~
 138 constitute a threat to the rights, health, safety, or welfare of
 139 the residents of long-term care facilities. To ensure that the
 140 effectiveness and efficiency of such investigations are not
 141 impeded by advance notice or delay, the Legislature intends that
 142 representatives of the office ~~the ombudsman and ombudsman~~
 143 ~~councils and their designated representatives~~ not be required to
 144 obtain warrants in order to enter into or conduct investigations
 145 or onsite administrative assessments of long-term care

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146 facilities. It is the further intent of the Legislature that the
147 environment in long-term care facilities be conducive to the
148 dignity and independence of residents and that investigations by
149 representatives of the office ~~ombudsman councils shall~~ further
150 the enforcement of laws, rules, and regulations that safeguard
151 the health, safety, and welfare of residents.

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

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

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

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

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

169 (3) (a) There is created in the office the position of legal
170 advocate, who shall be selected by and serve at the pleasure of
171 the state ombudsman and shall be a member in good standing of
172 The Florida Bar.

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

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

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

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

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

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

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

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

196 (a) Identify, investigate, and resolve complaints made by
197 or on behalf of residents of long-term care facilities relating
198 to actions or omissions by providers or representatives of
199 providers of long-term care services, other public or private
200 agencies, guardians, or representative payees that may adversely
201 affect the health, safety, welfare, or rights of the residents.

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

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

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

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

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

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

224 (h) Provide technical support for the development of
225 resident and family councils to protect the well-being and
226 rights of residents.

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

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

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

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

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

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

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

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

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

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

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

282 2. Evaluate the problems experienced by residents.

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

287 4. Provide recommendations for policy, regulatory, and
288 statutory changes designed to solve identified problems; resolve
289 residents' complaints; improve residents' lives and quality of
290 care; protect residents' rights, health, safety, and welfare;

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291 and remove any barriers to the optimal operation of the state
292 ~~Long-Term Care~~ ombudsman program.

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

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

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

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

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

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

309 (a) Serve as an advisory body to assist the state ombudsman
310 in developing strategies for recruitment, recognition, and
311 retention of ombudsmen ~~reaching a consensus among local councils~~
312 ~~on issues affecting residents and impacting the optimal~~
313 ~~operation of the program.~~

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

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320 ~~specified in s. 400.0074(2).~~

321 (c) Assist the state ombudsman by analyzing and commenting
322 on the development and implementation of laws, rules, and
323 regulations impacting the health, safety, welfare, and rights of
324 residents to discover, investigate, and determine the existence
325 of abuse or neglect in any long-term care facility, and work
326 with the adult protective services program as required in ss.
327 415.101-415.113.

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

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

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

337 (3) (a) The state ~~Long-Term Care Ombudsman~~ council shall be
338 composed of:

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

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

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

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

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

355 6. One licensed pharmacist.

356 7. One registered dietician or nutritionist.

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

360 9. One executive director of an area agency on aging.

361 10. One at-large member.

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

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

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

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

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378 that vacant position.

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

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

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

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

391 (b) 4. The position of any member missing 50 percent or more
392 of the three state council meetings within a 1-year period
393 without cause may be declared vacant by the state ombudsman. The
394 findings of the state ombudsman regarding cause shall be final
395 and binding.

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

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

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

404 ~~3. The chair may create additional executive positions as~~
405 ~~necessary to carry out the duties of the state council. Any~~
406 ~~person appointed to an executive position shall serve at the~~

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407 ~~pleasure of the chair, and his or her term shall expire on the~~
408 ~~same day as the term of the chair.~~

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

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

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

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

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

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

435 400.0069 ~~Local~~ Long-term care ombudsman districts ~~councils~~;

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436 duties; appointment membership.—

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

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

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

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

456 (b) Discover, investigate, and determine the existence of
457 abuse, ~~or neglect, or exploitation using in any long-term care~~
458 ~~facility and to use~~ the procedures provided for in ss. 415.101-
459 415.113 when applicable.

460 (c) Identify Elicit, receive, investigate, respond to, and
461 resolve complaints made by or on behalf of residents relating to
462 actions or omissions by providers or representatives of
463 providers of long-term care services, other public or private
464 agencies, guardians, representative payees, or other individuals

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465 that may adversely affect the health, safety, welfare, or rights
466 of residents.

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

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

477 (f) Recommend that the state ombudsman and the legal
478 advocate seek administrative, legal, and other remedies to
479 protect the health, safety, welfare, and rights of ~~the~~
480 residents.

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

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

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

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

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494 jurisdiction.

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

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

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

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

506 ~~4. At least one registered dietitian;~~

507 ~~5. At least six nursing home residents or representative~~
508 ~~consumer advocates for nursing home residents;~~

509 ~~6. At least three residents of assisted living facilities~~
510 ~~or adult family care homes or three representative consumer~~
511 ~~advocates for alternative long-term care facility residents;~~

512 ~~7. At least one attorney; and~~

513 ~~8. At least one professional social worker.~~

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

516 1. The owner or representative of a long-term care
517 facility.

518 2. A provider or representative of a provider of long-term
519 care services.

520 3. An employee of the agency.

521 4. An employee of the department, except for
522 representatives of the office.

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523 5. An employee of the Department of Children and Families.

524 6. An employee of the Agency for Persons with Disabilities.

525 ~~In no case shall the medical director of a long-term care~~
526 ~~facility or an employee of the agency, the department, the~~
527 ~~Department of Children and Family Services, or the Agency for~~
528 ~~Persons with Disabilities serve as a member or as an ex officio~~
529 ~~member of a council.~~

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

531 1. Individuals wishing to join a local council shall Submit
532 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

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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 of~~
570 ~~1 year. There shall be no limitation on the number of terms that~~
571 ~~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 to~~

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581 ~~the expiration of his or her term by a vote of two thirds of the~~
 582 ~~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 are
 598 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 not:

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

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610 service.

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

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

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

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

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

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

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

633 400.0071 State ~~Long-Term Care~~ ombudsman program complaint
634 procedures.—The department, in consultation with the state
635 ombudsman, shall adopt rules implementing state and local
636 complaint procedures. The rules must include procedures for
637 receiving, investigating, and resolving complaints concerning
638 the health, safety, welfare, and rights of residents;

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

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

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

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

648 400.0073 Complaint ~~State and local ombudsman council~~
649 ~~investigations.-~~

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

657 (a) Contrary to law;

658 (b) Unreasonable, unfair, oppressive, or unnecessarily
659 discriminatory, even though in accordance with law;

660 (c) Based on a mistake of fact;

661 (d) Based on improper or irrelevant grounds;

662 (e) Unaccompanied by an adequate statement of reasons;

663 (f) Performed in an inefficient manner; or

664 (g) Otherwise adversely affecting the health, safety,
665 welfare, or rights of a resident.

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

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

671 (2)~~(4)~~ If a representative of the office ~~the ombudsman or~~
672 ~~any state or local council member~~ is not allowed to enter a
673 long-term care facility, the administrator of the facility shall
674 be considered to have interfered with a representative of the
675 office, ~~the state council, or the local council~~ in the
676 performance of official duties as described in s. 400.0083(1)
677 and to have committed a violation of this part. The
678 representative of the office ~~ombudsman~~ shall report a facility's
679 refusal to allow entry to the facility to the state ombudsman or
680 designee, who shall then report the incident to the agency, and
681 the agency shall record the report and take it into
682 consideration when determining actions allowable under s.
683 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
684 429.71.

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

687 400.0074 ~~Local ombudsman council~~ Onsite administrative
688 assessments.-

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

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697 ~~encouraged to conduct a similar onsite administrative assessment~~
698 ~~of each additional long-term care facility within its~~
699 ~~jurisdiction.~~

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

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

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

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

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

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

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

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

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

733 (3)(4) An onsite administrative assessment may not be
734 accomplished by forcible entry. However, if a representative of
735 the office ombudsman or a state or local council member is not
736 allowed to enter a long-term care facility, the administrator of
737 the facility shall be considered to have interfered with a
738 representative of the office, ~~the state council, or the local~~
739 ~~council~~ in the performance of official duties as described in s.
740 400.0083(1) and to have committed a violation of this part. The
741 representative of the office ombudsman shall report the refusal
742 by a facility to allow entry to the state ombudsman or designee,
743 who shall then report the incident to the agency, and the agency
744 shall record the report and take it into consideration when
745 determining actions allowable under s. 400.102, s. 400.121, s.
746 429.14, s. 429.19, s. 429.69, or s. 429.71.

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

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

753 400.0075 Complaint notification and resolution procedures.—

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

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755 representative of the office ~~an ombudsman council~~ as a result of
756 an investigation may ~~or onsite administrative assessment, which~~
757 ~~complaint or problem is determined to require remedial action by~~
758 ~~the local council,~~ shall be identified and brought to the
759 attention of the long-term care facility administrator subject
760 to the confidentiality provisions of s. 400.0077 in writing.
761 Upon receipt of the information ~~such document,~~ the
762 administrator, with the concurrence of the representative of the
763 office ~~local council chair,~~ shall establish target dates for
764 taking appropriate remedial action. If, by the target date, the
765 remedial action is not completed or forthcoming, the complaint
766 shall be referred to the district manager ~~local council chair~~
767 ~~may, after obtaining approval from the ombudsman and a majority~~
768 ~~of the members of the local council:~~

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

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

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

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

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784 ~~immediate legal or administrative remedies to protect the~~
785 resident.

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

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

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

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

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

811 (d)4. Recommend to the department and the agency that
812 procedures be initiated for action against ~~revocation of~~ the

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813 long-term care facility's license in accordance with chapter
814 120.

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

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

826 Section 12. Section 400.0078, Florida Statutes, is amended
827 to read:

828 400.0078 Citizen access to state ~~Long-Term Care~~ ombudsman
829 program services.—

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

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

838 (a) The purpose of the state ~~Long-Term Care~~ ombudsman
839 program.~~7~~

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

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

845 (d) Other relevant information regarding how to contact
846 representatives of the office program.

847
848 Residents or their representatives must be furnished additional
849 copies of this information upon request.

850 Section 13. Section 400.0079, Florida Statutes, is amended
851 to read:

852 400.0079 Immunity.—

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

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

863 Section 14. Section 400.0081, Florida Statutes, is amended
864 to read:

865 400.0081 Access to facilities, residents, and records.—

866 (1) A long-term care facility shall provide representatives
867 of the office, ~~the state council and its members, and the local~~
868 ~~councils and their members~~ access to:

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

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

873 1. The representative of the office has the permission of
874 the resident or the legal representative of the resident; or

875 2. The resident is unable to consent to the review and has
876 no legal representative.

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

879 1. A legal representative or guardian of the resident
880 refuses to give permission;

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

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

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

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

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

895 Section 15. Section 400.0083, Florida Statutes, is amended
896 to read:

897 400.0083 Interference; retaliation; penalties.—

898 (1) It shall be unlawful for any person, long-term care
899 facility, or other entity to willfully interfere with a

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900 representative of the office or, the state council, ~~or a local~~
901 ~~council~~ in the performance of official duties.

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

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

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

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

914 Section 16. Section 400.0087, Florida Statutes, is amended
915 to read:

916 400.0087 Department oversight; funding.—

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

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

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

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929 activities.

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

933 (3) The department is responsible for ensuring that the
934 office:

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

937 (b) Provides information to public and private agencies,
938 legislators, and others.

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

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

945 (4) The department shall also:

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

949 (b) Whenever necessary, act as liaison between agencies and
950 branches of the federal and state governments and the office
951 ~~State Long-Term Care Ombudsman Program~~.

952 Section 17. Section 400.0089, Florida Statutes, is amended
953 to read:

954 400.0089 Complaint data reports.—The office shall maintain
955 a statewide uniform reporting system to collect and analyze data
956 relating to complaints and conditions in long-term care
957 facilities and to residents for the purpose of identifying and

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958 resolving significant complaints ~~problems~~. The office shall
959 publish quarterly and make readily available information
960 pertaining to the number and types of complaints received by the
961 state ~~Long-Term Care~~ ombudsman program and shall include such
962 information in the annual report required under s. 400.0065.

963 Section 18. Section 400.0091, Florida Statutes, is amended
964 to read:

965 400.0091 Training.—The state ombudsman shall ensure that
966 appropriate training is provided to all representatives
967 ~~employees~~ of the office and ~~to the members of the state and~~
968 ~~local councils~~.

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

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

978 (a) Resident confidentiality.

979 (b) Guardianships and powers of attorney.

980 (c) Medication administration.

981 (d) Care and medication of residents with dementia and
982 Alzheimer's disease.

983 (e) Accounting for residents' funds.

984 (f) Discharge rights and responsibilities.

985 (g) Cultural sensitivity.

986 (h) Any other topic related to residency within a long-term

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987 care facility ~~recommended by the secretary.~~

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

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

999 20.41 Department of Elderly Affairs.—There is created a
 1000 Department of Elderly Affairs.

1001 (4) The department shall administer the Office of State
 1002 Long-Term Care Ombudsman Council, created by s. 400.0063
 1003 ~~400.0067,~~ and the ~~local long-term care ombudsman councils,~~
 1004 ~~created by s. 400.0069~~ and shall, as required by s. 712 of the
 1005 federal Older Americans Act of 1965, ensure that ~~both~~ the state
 1006 office operates and ~~local long-term care ombudsman councils~~
 1007 ~~operate~~ in compliance with the Older Americans Act.

1008 Section 20. Subsections (11) through (19) of section
 1009 400.021, Florida Statutes, are renumbered as subsections (10)
 1010 through (18), respectively, and present subsections (10) and
 1011 (18) are amended to read:

1012 400.021 Definitions.—When used in this part, unless the
 1013 context otherwise requires, the term:

1014 ~~(10) "Local ombudsman council" means a local long-term care~~
 1015 ~~ombudsman council established pursuant to s. 400.0069, located~~

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1016 ~~within the Older Americans Act planning and service areas.~~

1017 ~~(17)-(18)~~ "State ombudsman program council" means the Office
1018 of State Long-Term Care Ombudsman Council established pursuant
1019 to s. 400.0063 ~~400.0067~~.

1020 Section 21. Paragraph (c) of subsection (1) and subsections
1021 (2) and (3) of section 400.022, Florida Statutes, are amended to
1022 read:

1023 400.022 Residents' rights.—

1024 (1) All licensees of nursing home facilities shall adopt
1025 and make public a statement of the rights and responsibilities
1026 of the residents of such facilities and shall treat such
1027 residents in accordance with the provisions of that statement.
1028 The statement shall assure each resident the following:

1029 (c) Any entity or individual that provides health, social,
1030 legal, or other services to a resident has the right to have
1031 reasonable access to the resident. The resident has the right to
1032 deny or withdraw consent to access at any time by any entity or
1033 individual. Notwithstanding the visiting policy of the facility,
1034 the following individuals must be permitted immediate access to
1035 the resident:

1036 1. Any representative of the federal or state government,
1037 including, but not limited to, representatives of the Department
1038 of Children and Families ~~Family~~ Services, the Department of
1039 Health, the Agency for Health Care Administration, the Office of
1040 the Attorney General, and the Department of Elderly Affairs; any
1041 law enforcement officer; representatives ~~members~~ of the state ~~or~~
1042 ~~local~~ ombudsman program council; and the resident's individual
1043 physician.

1044 2. Subject to the resident's right to deny or withdraw

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1045 consent, immediate family or other relatives of the resident.

1046
1047 The facility must allow representatives of the state ~~Long-Term~~
1048 ~~Care~~ ombudsman program council to examine a resident's clinical
1049 records with the permission of the resident or the resident's
1050 legal representative and consistent with state law.

1051 (2) The licensee for each nursing home shall orally inform
1052 the resident of the resident's rights and provide a copy of the
1053 statement required by subsection (1) to each resident or the
1054 resident's legal representative at or before the resident's
1055 admission to a facility. The licensee shall provide a copy of
1056 the resident's rights to each staff member of the facility. Each
1057 such licensee shall prepare a written plan and provide
1058 appropriate staff training to implement ~~the provisions of~~ this
1059 section. The written statement of rights must include a
1060 statement that a resident may file a complaint with the agency
1061 or state local ombudsman program council. The statement must be
1062 in boldfaced type and shall include the ~~name, address, and~~
1063 telephone number and e-mail address of the state numbers of the
1064 ~~local~~ ombudsman program council and the telephone number of the
1065 central abuse hotline where complaints may be lodged.

1066 (3) Any violation of the resident's rights set forth in
1067 this section shall constitute grounds for action by the agency
1068 under ~~the provisions of~~ s. 400.102, s. 400.121, or part II of
1069 chapter 408. In order to determine whether the licensee is
1070 adequately protecting residents' rights, the licensure
1071 inspection of the facility shall include private informal
1072 conversations with a sample of residents to discuss residents'
1073 experiences within the facility with respect to rights specified

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1074 in this section and general compliance with standards, and
 1075 consultation with the state ombudsman program council ~~in the~~
 1076 ~~local planning and service area of the Department of Elderly~~
 1077 ~~Affairs in which the nursing home is located.~~

1078 Section 22. Subsections (8) and (9) and (11) through (14)
 1079 of section 400.0255, Florida Statutes, are amended to read:

1080 400.0255 Resident transfer or discharge; requirements and
 1081 procedures; hearings.-

1082 (8) The notice required by subsection (7) must be in
 1083 writing and must contain all information required by state and
 1084 federal law, rules, or regulations applicable to Medicaid or
 1085 Medicare cases. The agency shall develop a standard document to
 1086 be used by all facilities licensed under this part for purposes
 1087 of notifying residents of a discharge or transfer. Such document
 1088 must include a means for a resident to request the state local
 1089 ~~long-term care~~ ombudsman program council to review the notice
 1090 and request information about or assistance with initiating a
 1091 fair hearing with the department's Office of Appeals Hearings.
 1092 In addition to any other pertinent information included, the
 1093 form shall specify the reason allowed under federal or state law
 1094 that the resident is being discharged or transferred, with an
 1095 explanation to support this action. Further, the form shall
 1096 state the effective date of the discharge or transfer and the
 1097 location to which the resident is being discharged or
 1098 transferred. The form shall clearly describe the resident's
 1099 appeal rights and the procedures for filing an appeal, including
 1100 the right to request the state local ombudsman program council
 1101 to review the notice of discharge or transfer. A copy of the
 1102 notice must be placed in the resident's clinical record, and a

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1103 copy must be transmitted to the resident's legal guardian or
1104 representative and to the state ~~local~~ ombudsman program ~~council~~
1105 within 5 business days after signature by the resident or
1106 resident designee.

1107 (9) A resident may request that the state ~~local~~ ombudsman
1108 program ~~council~~ review any notice of discharge or transfer given
1109 to the resident. When requested by a resident to review a notice
1110 of discharge or transfer, the state ~~local~~ ombudsman program
1111 ~~council~~ shall do so within 7 days after receipt of the request.
1112 The nursing home administrator, or the administrator's designee,
1113 must forward the request for review contained in the notice to
1114 the state ~~local~~ ombudsman program ~~council~~ within 24 hours after
1115 such request is submitted. Failure to forward the request within
1116 24 hours after the request is submitted shall toll the running
1117 of the 30-day advance notice period until the request has been
1118 forwarded.

1119 (11) Notwithstanding paragraph (10) (b), an emergency
1120 discharge or transfer may be implemented as necessary pursuant
1121 to state or federal law during the period of time after the
1122 notice is given and before the time a hearing decision is
1123 rendered. Notice of an emergency discharge or transfer to the
1124 resident, the resident's legal guardian or representative, and
1125 the state ~~local~~ ombudsman program ~~council~~ if requested pursuant
1126 to subsection (9) must be by telephone or in person. This notice
1127 shall be given before the transfer, if possible, or as soon
1128 thereafter as practicable. A representative of the state ~~local~~
1129 ombudsman program ~~council~~ conducting a review under this
1130 subsection shall do so within 24 hours after receipt of the
1131 request. The resident's file must be documented to show who was

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1132 contacted, whether the contact was by telephone or in person,
 1133 and the date and time of the contact. If the notice is not given
 1134 in writing, written notice meeting the requirements of
 1135 subsection (8) must be given the next working day.

1136 (12) After receipt of any notice required under this
 1137 section, the state local ombudsman program council may request a
 1138 private informal conversation with a resident to whom the notice
 1139 is directed, and, if known, a family member or the resident's
 1140 legal guardian or designee, to ensure that the facility is
 1141 proceeding with the discharge or transfer in accordance with ~~the~~
 1142 ~~requirements of~~ this section. If requested, the state local
 1143 ombudsman program council shall assist the resident with filing
 1144 an appeal of the proposed discharge or transfer.

1145 (13) The following persons must be present at all hearings
 1146 authorized under this section:

1147 (a) The resident, or the resident's legal representative or
 1148 designee.

1149 (b) The facility administrator, or the facility's legal
 1150 representative or designee.

1151
 1152 A representative of the state local ~~long-term care~~ ombudsman
 1153 program council may be present at all hearings authorized by
 1154 this section.

1155 (14) In any hearing under this section, the following
 1156 information concerning the parties shall be confidential and
 1157 exempt from ~~the provisions of~~ s. 119.07(1):

1158 (a) Names and addresses.

1159 (b) Medical services provided.

1160 (c) Social and economic conditions or circumstances.

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1161 (d) Evaluation of personal information.

1162 (e) Medical data, including diagnosis and past history of
1163 disease or disability.

1164 (f) Any information received verifying income eligibility
1165 and amount of medical assistance payments. Income information
1166 received from the Social Security Administration or the Internal
1167 Revenue Service must be safeguarded according to the
1168 requirements of the agency that furnished the data.

1169

1170 The exemption created by this subsection does not prohibit
1171 access to such information by the state ombudsman program ~~a~~
1172 ~~local long-term care ombudsman council~~ upon request, by a
1173 reviewing court if such information is required to be part of
1174 the record upon subsequent review, or as specified in s. 24(a),
1175 Art. I of the State Constitution.

1176 Section 23. Subsection (2) of section 400.1413, Florida
1177 Statutes, is amended to read:

1178 400.1413 Volunteers in nursing homes.—

1179 (2) This section does not affect the activities of the
1180 ~~state or local long-term care~~ ombudsman program ~~councils~~
1181 authorized under part I.

1182 Section 24. Paragraph (d) of subsection (5) of section
1183 400.162, Florida Statutes, is amended to read:

1184 400.162 Property and personal affairs of residents.—

1185 (5)

1186 (d) If, at any time during the period for which a license
1187 is issued, a licensee that has not purchased a surety bond or
1188 entered into a self-insurance agreement, as provided in
1189 paragraphs (b) and (c), is requested to provide safekeeping for

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1190 the personal funds of a resident, the licensee shall notify the
1191 agency of the request and make application for a surety bond or
1192 for participation in a self-insurance agreement within 7 days
1193 after ~~of~~ the request, exclusive of weekends and holidays. Copies
1194 of the application, along with written documentation of related
1195 correspondence with an insurance agency or group, shall be
1196 maintained by the licensee for review by the agency and the
1197 state ~~Nursing Home and Long-Term Care Facility~~ ombudsman program
1198 ~~Council~~.

1199 Section 25. Subsections (1) and (4) of section 400.19,
1200 Florida Statutes, are amended to read:

1201 400.19 Right of entry and inspection.-

1202 (1) In accordance with part II of chapter 408, the agency
1203 and any duly designated officer or employee thereof or a
1204 representative member of the state ~~Long-Term Care~~ ombudsman
1205 program Council ~~or the local long-term care ombudsman council~~
1206 shall have the right to enter upon and into the premises of any
1207 facility licensed pursuant to this part, or any distinct nursing
1208 home unit of a hospital licensed under chapter 395 or any
1209 freestanding facility licensed under chapter 395 that provides
1210 extended care or other long-term care services, at any
1211 reasonable time in order to determine the state of compliance
1212 with ~~the provisions of~~ this part, part II of chapter 408, and
1213 applicable rules in force pursuant thereto. The agency shall,
1214 within 60 days after receipt of a complaint made by a resident
1215 or resident's representative, complete its investigation and
1216 provide to the complainant its findings and resolution.

1217 (4) The agency shall conduct unannounced onsite facility
1218 reviews following written verification of licensee noncompliance

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1219 in instances in which the state ombudsman program ~~a long-term~~
1220 ~~care ombudsman council~~, pursuant to ss. 400.0071 and 400.0075,
1221 has received a complaint and has documented deficiencies in
1222 resident care or in the physical plant of the facility that
1223 threaten the health, safety, or security of residents, or when
1224 the agency documents through inspection that conditions in a
1225 facility present a direct or indirect threat to the health,
1226 safety, or security of residents. However, the agency shall
1227 conduct unannounced onsite reviews every 3 months of each
1228 facility while the facility has a conditional license.
1229 Deficiencies related to physical plant do not require followup
1230 reviews after the agency has determined that correction of the
1231 deficiency has been accomplished and that the correction is of
1232 the nature that continued compliance can be reasonably expected.

1233 Section 26. Subsection (1) of section 400.191, Florida
1234 Statutes, is amended to read:

1235 400.191 Availability, distribution, and posting of reports
1236 and records.—

1237 (1) The agency shall provide information to the public
1238 about all of the licensed nursing home facilities operating in
1239 the state. The agency shall, within 60 days after a licensure
1240 inspection visit or within 30 days after any interim visit to a
1241 facility, send copies of the inspection reports to the state
1242 ~~local long-term care ombudsman~~ program ~~council~~, the agency's
1243 local office, and a public library or the county seat for the
1244 county in which the facility is located. The agency may provide
1245 electronic access to inspection reports as a substitute for
1246 sending copies.

1247 Section 27. Subsection (6) and paragraph (c) of subsection

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1248 (7) of section 400.23, Florida Statutes, are amended to read:

1249 400.23 Rules; evaluation and deficiencies; licensure
1250 status.—

1251 (6) Before ~~Prior to~~ conducting a survey of the facility,
1252 the survey team shall obtain a copy of the state ~~local long-term~~
1253 ~~care~~ ombudsman program ~~council~~ report on the facility. Problems
1254 noted in the report shall be incorporated into and followed up
1255 through the agency's inspection process. This procedure does not
1256 preclude the state ~~local long-term care~~ ombudsman program
1257 ~~council~~ from requesting the agency to conduct a followup visit
1258 to the facility.

1259 (7) The agency shall, at least every 15 months, evaluate
1260 all nursing home facilities and make a determination as to the
1261 degree of compliance by each licensee with the established rules
1262 adopted under this part as a basis for assigning a licensure
1263 status to that facility. The agency shall base its evaluation on
1264 the most recent inspection report, taking into consideration
1265 findings from other official reports, surveys, interviews,
1266 investigations, and inspections. In addition to license
1267 categories authorized under part II of chapter 408, the agency
1268 shall assign a licensure status of standard or conditional to
1269 each nursing home.

1270 (c) In evaluating the overall quality of care and services
1271 and determining whether the facility will receive a conditional
1272 or standard license, the agency shall consider the needs and
1273 limitations of residents in the facility and the results of
1274 interviews and surveys of a representative sampling of
1275 residents, families of residents, representatives of the state
1276 ombudsman program ~~council members in the planning and service~~

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1277 ~~area in which the facility is located,~~ guardians of residents,
1278 and staff of the nursing home facility.

1279 Section 28. Paragraph (a) of subsection (3), paragraph (f)
1280 of subsection (5), and subsection (6) of section 400.235,
1281 Florida Statutes, are amended to read:

1282 400.235 Nursing home quality and licensure status; Gold
1283 Seal Program.—

1284 (3) (a) The Gold Seal Program shall be developed and
1285 implemented by the Governor's Panel on Excellence in Long-Term
1286 Care which shall operate under the authority of the Executive
1287 Office of the Governor. The panel shall be composed of three
1288 persons appointed by the Governor, to include a consumer
1289 advocate for senior citizens and two persons with expertise in
1290 the fields of quality management, service delivery excellence,
1291 or public sector accountability; three persons appointed by the
1292 Secretary of Elderly Affairs, to include an active member of a
1293 nursing facility family and resident care council and a member
1294 of the University Consortium on Aging; a representative of the
1295 Office of State Long-Term Care Ombudsman; one person appointed
1296 by the Florida Life Care Residents Association; one person
1297 appointed by the State Surgeon General; two persons appointed by
1298 the Secretary of Health Care Administration; one person
1299 appointed by the Florida Association of Homes for the Aging; and
1300 one person appointed by the Florida Health Care Association.
1301 Vacancies on the panel shall be filled in the same manner as the
1302 original appointments.

1303 (5) Facilities must meet the following additional criteria
1304 for recognition as a Gold Seal Program facility:

1305 (f) Evidence an outstanding record regarding the number and

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1306 types of substantiated complaints reported to the Office of
1307 State Long-Term Care Ombudsman ~~Council~~ within the 30 months
1308 preceding application for the program.

1309
1310 A facility assigned a conditional licensure status may not
1311 qualify for consideration for the Gold Seal Program until after
1312 it has operated for 30 months with no class I or class II
1313 deficiencies and has completed a regularly scheduled relicensure
1314 survey.

1315 (6) The agency, nursing facility industry organizations,
1316 consumers, Office of State Long-Term Care Ombudsman ~~Council~~, and
1317 members of the community may recommend to the Governor
1318 facilities that meet the established criteria for consideration
1319 for and award of the Gold Seal. The panel shall review nominees
1320 and make a recommendation to the Governor for final approval and
1321 award. The decision of the Governor is final and is not subject
1322 to appeal.

1323 Section 29. Paragraph (a) of subsection (1) of section
1324 415.1034, Florida Statutes, is amended to read:

1325 415.1034 Mandatory reporting of abuse, neglect, or
1326 exploitation of vulnerable adults; mandatory reports of death.-

1327 (1) MANDATORY REPORTING.-

1328 (a) Any person, including, but not limited to, any:

1329 1. Physician, osteopathic physician, medical examiner,
1330 chiropractic physician, nurse, paramedic, emergency medical
1331 technician, or hospital personnel engaged in the admission,
1332 examination, care, or treatment of vulnerable adults;

1333 2. Health professional or mental health professional other
1334 than one listed in subparagraph 1.;

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1335 3. Practitioner who relies solely on spiritual means for
1336 healing;

1337 4. Nursing home staff; assisted living facility staff;
1338 adult day care center staff; adult family-care home staff;
1339 social worker; or other professional adult care, residential, or
1340 institutional staff;

1341 5. State, county, or municipal criminal justice employee or
1342 law enforcement officer;

1343 6. ~~An~~ Employee of the Department of Business and
1344 Professional Regulation conducting inspections of public lodging
1345 establishments under s. 509.032;

1346 7. Florida advocacy council member or representative of the
1347 Office of State Long-Term Care Ombudsman ~~council member~~; or

1348 8. Bank, savings and loan, or credit union officer,
1349 trustee, or employee,

1350
1351 who knows, or has reasonable cause to suspect, that a vulnerable
1352 adult has been or is being abused, neglected, or exploited shall
1353 immediately report such knowledge or suspicion to the central
1354 abuse hotline.

1355 Section 30. Subsection (1) of section 415.104, Florida
1356 Statutes, is amended to read:

1357 415.104 Protective investigations of cases of abuse,
1358 neglect, or exploitation of vulnerable adults; transmittal of
1359 records to state attorney.—

1360 (1) The department shall, upon receipt of a report alleging
1361 abuse, neglect, or exploitation of a vulnerable adult, begin
1362 within 24 hours a protective investigation of the facts alleged
1363 therein. If a caregiver refuses to allow the department to begin

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1364 a protective investigation or interferes with the conduct of
1365 such an investigation, the appropriate law enforcement agency
1366 shall be contacted for assistance. If, during the course of the
1367 investigation, the department has reason to believe that the
1368 abuse, neglect, or exploitation is perpetrated by a second
1369 party, the appropriate law enforcement agency and state attorney
1370 shall be orally notified. The department and the law enforcement
1371 agency shall cooperate to allow the criminal investigation to
1372 proceed concurrently with, and not be hindered by, the
1373 protective investigation. The department shall make a
1374 preliminary written report to the law enforcement agencies
1375 within 5 working days after the oral report. The department
1376 shall, within 24 hours after receipt of the report, notify the
1377 appropriate Florida local advocacy council, or state long-term
1378 ~~care~~ ombudsman program council, when appropriate, that an
1379 alleged abuse, neglect, or exploitation perpetrated by a second
1380 party has occurred. Notice to the Florida local advocacy council
1381 or state long-term care ~~ombudsman program council~~ may be
1382 accomplished orally or in writing and shall include the name and
1383 location of the vulnerable adult alleged to have been abused,
1384 neglected, or exploited and the nature of the report.

1385 Section 31. Subsection (8) of section 415.1055, Florida
1386 Statutes, is amended to read:

1387 415.1055 Notification to administrative entities.—

1388 (8) At the conclusion of a protective investigation at a
1389 facility, the department shall notify either the Florida local
1390 advocacy council or state long-term care ~~ombudsman program~~
1391 ~~council~~ of the results of the investigation. This notification
1392 must be in writing.

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1393 Section 32. Subsection (2) of section 415.106, Florida
1394 Statutes, is amended to read:

1395 415.106 Cooperation by the department and criminal justice
1396 and other agencies.—

1397 (2) To ensure coordination, communication, and cooperation
1398 with the investigation of abuse, neglect, or exploitation of
1399 vulnerable adults, the department shall develop and maintain
1400 interprogram agreements or operational procedures among
1401 appropriate departmental programs and the Office of State Long-
1402 Term Care Ombudsman Council, the Florida Statewide Advocacy
1403 Council, and other agencies that provide services to vulnerable
1404 adults. These agreements or procedures must cover such subjects
1405 as the appropriate roles and responsibilities of the department
1406 in identifying and responding to reports of abuse, neglect, or
1407 exploitation of vulnerable adults; the provision of services;
1408 and related coordinated activities.

1409 Section 33. Paragraph (g) of subsection (3) of section
1410 415.107, Florida Statutes, is amended to read:

1411 415.107 Confidentiality of reports and records.—

1412 (3) Access to all records, excluding the name of the
1413 reporter which shall be released only as provided in subsection
1414 (6), shall be granted only to the following persons, officials,
1415 and agencies:

1416 (g) Any appropriate official of the Florida advocacy
1417 council or state long-term care ombudsman program council
1418 investigating a report of known or suspected abuse, neglect, or
1419 exploitation of a vulnerable adult.

1420 Section 34. Subsection (20) of section 429.02, Florida
1421 Statutes, is amended to read:

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1422 429.02 Definitions.—When used in this part, the term:

1423 (20) "Resident's representative or designee" means a person
1424 other than the owner, or an agent or employee of the facility,
1425 designated in writing by the resident, if legally competent, to
1426 receive notice of changes in the contract executed pursuant to
1427 s. 429.24; to receive notice of and to participate in meetings
1428 between the resident and the facility owner, administrator, or
1429 staff concerning the rights of the resident; to assist the
1430 resident in contacting the state ombudsman program council ~~council~~ if
1431 the resident has a complaint against the facility; or to bring
1432 legal action on behalf of the resident pursuant to s. 429.29.

1433 Section 35. Paragraph (b) of subsection (3) of section
1434 429.07, Florida Statutes, is amended to read:

1435 429.07 License required; fee.—

1436 (3) In addition to the requirements of s. 408.806, each
1437 license granted by the agency must state the type of care for
1438 which the license is granted. Licenses shall be issued for one
1439 or more of the following categories of care: standard, extended
1440 congregate care, limited nursing services, or limited mental
1441 health.

1442 (b) An extended congregate care license shall be issued to
1443 facilities providing, directly or through contract, services
1444 beyond those authorized in paragraph (a), including services
1445 performed by persons licensed under part I of chapter 464 and
1446 supportive services, as defined by rule, to persons who would
1447 otherwise be disqualified from continued residence in a facility
1448 licensed under this part.

1449 1. In order for extended congregate care services to be
1450 provided, the agency must first determine that all requirements

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1451 established in law and rule are met and must specifically
1452 designate, on the facility's license, that such services may be
1453 provided and whether the designation applies to all or part of
1454 the facility. Such designation may be made at the time of
1455 initial licensure or relicensure, or upon request in writing by
1456 a licensee under this part and part II of chapter 408. The
1457 notification of approval or the denial of the request shall be
1458 made in accordance with part II of chapter 408. Existing
1459 facilities qualifying to provide extended congregate care
1460 services must have maintained a standard license and may not
1461 have been subject to administrative sanctions during the
1462 previous 2 years, or since initial licensure if the facility has
1463 been licensed for less than 2 years, for any of the following
1464 reasons:

- 1465 a. A class I or class II violation;
- 1466 b. Three or more repeat or recurring class III violations
1467 of identical or similar resident care standards from which a
1468 pattern of noncompliance is found by the agency;
- 1469 c. Three or more class III violations that were not
1470 corrected in accordance with the corrective action plan approved
1471 by the agency;
- 1472 d. Violation of resident care standards which results in
1473 requiring the facility to employ the services of a consultant
1474 pharmacist or consultant dietitian;
- 1475 e. Denial, suspension, or revocation of a license for
1476 another facility licensed under this part in which the applicant
1477 for an extended congregate care license has at least 25 percent
1478 ownership interest; or
- 1479 f. Imposition of a moratorium pursuant to this part or part

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1480 II of chapter 408 or initiation of injunctive proceedings.

1481 2. A facility that is licensed to provide extended
1482 congregate care services shall maintain a written progress
1483 report on each person who receives services which describes the
1484 type, amount, duration, scope, and outcome of services that are
1485 rendered and the general status of the resident's health. A
1486 registered nurse, or appropriate designee, representing the
1487 agency shall visit the facility at least quarterly to monitor
1488 residents who are receiving extended congregate care services
1489 and to determine whether ~~if~~ the facility is in compliance with
1490 this part, part II of chapter 408, and relevant rules. One of
1491 the visits may be in conjunction with the regular survey. The
1492 monitoring visits may be provided through contractual
1493 arrangements with appropriate community agencies. A registered
1494 nurse shall serve as part of the team that inspects the
1495 facility. The agency may waive one of the required yearly
1496 monitoring visits for a facility that has been licensed for at
1497 least 24 months to provide extended congregate care services,
1498 if, during the inspection, the registered nurse determines that
1499 extended congregate care services are being provided
1500 appropriately, and if the facility has no class I or class II
1501 violations and no uncorrected class III violations. The agency
1502 must first consult with the state ~~long-term care~~ ombudsman
1503 program ~~council~~ for the area in which the facility is located to
1504 determine whether ~~if~~ any complaints have been made and
1505 substantiated about the quality of services or care. The agency
1506 may not waive one of the required yearly monitoring visits if
1507 complaints have been made and substantiated.

1508 3. A facility that is licensed to provide extended

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1509 congregate care services must:

1510 a. Demonstrate the capability to meet unanticipated
1511 resident service needs.

1512 b. Offer a physical environment that promotes a homelike
1513 setting, provides for resident privacy, promotes resident
1514 independence, and allows sufficient congregate space as defined
1515 by rule.

1516 c. Have sufficient staff available, taking into account the
1517 physical plant and firesafety features of the building, to
1518 assist with the evacuation of residents in an emergency.

1519 d. Adopt and follow policies and procedures that maximize
1520 resident independence, dignity, choice, and decisionmaking to
1521 permit residents to age in place, so that moves due to changes
1522 in functional status are minimized or avoided.

1523 e. Allow residents or, if applicable, a resident's
1524 representative, designee, surrogate, guardian, or attorney in
1525 fact to make a variety of personal choices, participate in
1526 developing service plans, and share responsibility in
1527 decisionmaking.

1528 f. Implement the concept of managed risk.

1529 g. Provide, directly or through contract, the services of a
1530 person licensed under part I of chapter 464.

1531 h. In addition to the training mandated in s. 429.52,
1532 provide specialized training as defined by rule for facility
1533 staff.

1534 4. A facility that is licensed to provide extended
1535 congregate care services is exempt from the criteria for
1536 continued residency set forth in rules adopted under s. 429.41.
1537 A licensed facility must adopt its own requirements within

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1538 guidelines for continued residency set forth by rule. However,
1539 the facility may not serve residents who require 24-hour nursing
1540 supervision. A licensed facility that provides extended
1541 congregate care services must also provide each resident with a
1542 written copy of facility policies governing admission and
1543 retention.

1544 5. The primary purpose of extended congregate care services
1545 is to allow residents, as they become more impaired, the option
1546 of remaining in a familiar setting from which they would
1547 otherwise be disqualified for continued residency. A facility
1548 licensed to provide extended congregate care services may also
1549 admit an individual who exceeds the admission criteria for a
1550 facility with a standard license, if the individual is
1551 determined appropriate for admission to the extended congregate
1552 care facility.

1553 6. Before the admission of an individual to a facility
1554 licensed to provide extended congregate care services, the
1555 individual must undergo a medical examination as provided in s.
1556 429.26(4) and the facility must develop a preliminary service
1557 plan for the individual.

1558 7. When a facility can no longer provide or arrange for
1559 services in accordance with the resident's service plan and
1560 needs and the facility's policy, the facility shall make
1561 arrangements for relocating the person in accordance with s.
1562 429.28(1)(k).

1563 8. Failure to provide extended congregate care services may
1564 result in denial of extended congregate care license renewal.

1565 Section 36. Subsection (9) of section 429.19, Florida
1566 Statutes, is amended to read:

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1567 429.19 Violations; imposition of administrative fines;
 1568 grounds.—

1569 (9) The agency shall develop and disseminate an annual list
 1570 of all facilities sanctioned or fined for violations of state
 1571 standards, the number and class of violations involved, the
 1572 penalties imposed, and the current status of cases. The list
 1573 shall be disseminated, at no charge, to the Department of
 1574 Elderly Affairs, the Department of Health, the Department of
 1575 Children and Families ~~Family Services~~, the Agency for Persons
 1576 with Disabilities, the area agencies on aging, the Florida
 1577 Statewide Advocacy Council, and the state ~~and local~~ ombudsman
 1578 program ~~councils~~. The Department of Children and Families ~~Family~~
 1579 ~~Services~~ shall disseminate the list to service providers under
 1580 contract to the department who are responsible for referring
 1581 persons to a facility for residency. The agency may charge a fee
 1582 commensurate with the cost of printing and postage to other
 1583 interested parties requesting a copy of this list. This
 1584 information may be provided electronically or through the
 1585 agency's Internet site.

1586 Section 37. Subsection (8) of section 429.26, Florida
 1587 Statutes, is amended to read:

1588 429.26 Appropriateness of placements; examinations of
 1589 residents.—

1590 (8) The Department of Children and Families ~~Family Services~~
 1591 may require an examination for supplemental security income and
 1592 optional state supplementation recipients residing in facilities
 1593 at any time and shall provide the examination whenever a
 1594 resident's condition requires it. Any facility administrator;
 1595 personnel of the agency, the department, or the Department of

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1596 Children and Families ~~Family Services~~; or representative of the
1597 state long-term care ombudsman program ~~council member~~ who
1598 believes a resident needs to be evaluated shall notify the
1599 resident's case manager, who shall take appropriate action. A
1600 report of the examination findings shall be provided to the
1601 resident's case manager and the facility administrator to help
1602 the administrator meet his or her responsibilities under
1603 subsection (1).

1604 Section 38. Subsection (2) and paragraph (b) of subsection
1605 (3) of section 429.28, Florida Statutes, are amended to read:

1606 429.28 Resident bill of rights.—

1607 (2) The administrator of a facility shall ensure that a
1608 written notice of the rights, obligations, and prohibitions set
1609 forth in this part is posted in a prominent place in each
1610 facility and read or explained to residents who cannot read.
1611 This notice shall include the statewide toll-free telephone
1612 number and e-mail address ~~name, address, and telephone numbers~~
1613 of the state local ombudsman program ~~council~~ and central abuse
1614 hotline and, when applicable, the Advocacy Center for Persons
1615 with Disabilities, Inc., and the Florida local advocacy council,
1616 where complaints may be lodged. The facility must ensure a
1617 resident's access to a telephone to call the state local
1618 ombudsman program ~~council~~, central abuse hotline, Advocacy
1619 Center for Persons with Disabilities, Inc., and the Florida
1620 local advocacy council.

1621 (3)

1622 (b) In order to determine whether the facility is
1623 adequately protecting residents' rights, the biennial survey
1624 shall include private informal conversations with a sample of

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1625 residents and consultation with the state ombudsman program
1626 ~~council~~ in the planning and service area in which the facility
1627 is located to discuss residents' experiences within the
1628 facility.

1629 Section 39. Section 429.34, Florida Statutes, is amended to
1630 read:

1631 429.34 Right of entry and inspection.—In addition to the
1632 requirements of s. 408.811, any duly designated officer or
1633 employee of the department, the Department of Children and
1634 Families Family Services, the Medicaid Fraud Control Unit of the
1635 Office of the Attorney General, the state or local fire marshal,
1636 or a representative member of the state ~~or local long-term care~~
1637 ombudsman program council shall have the right to enter
1638 unannounced upon and into the premises of any facility licensed
1639 pursuant to this part in order to determine the state of
1640 compliance with ~~the provisions of~~ this part, part II of chapter
1641 408, and applicable rules. Data collected by the state ~~or local~~
1642 ~~long-term care~~ ombudsman program councils or the state or local
1643 advocacy councils may be used by the agency in investigations
1644 involving violations of regulatory standards.

1645 Section 40. Subsection (2) of section 429.35, Florida
1646 Statutes, is amended to read:

1647 429.35 Maintenance of records; reports.—

1648 (2) Within 60 days after the date of the biennial
1649 inspection visit required under s. 408.811 or within 30 days
1650 after the date of any interim visit, the agency shall forward
1651 the results of the inspection to the state local ombudsman
1652 program council ~~in whose planning and service area, as defined~~
1653 ~~in part II of chapter 400, the facility is located;~~ to at least

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1654 one public library or, in the absence of a public library, the
1655 county seat in the county in which the inspected assisted living
1656 facility is located; and, when appropriate, to the district
1657 Adult Services and Mental Health Program Offices.

1658 Section 41. Subsection (2) of section 429.85, Florida
1659 Statutes, is amended to read:

1660 429.85 Residents' bill of rights.—

1661 (2) The provider shall ensure that residents and their
1662 legal representatives are made aware of the rights, obligations,
1663 and prohibitions set forth in this part. Residents must also be
1664 given the statewide toll-free telephone number and e-mail
1665 address of the state ombudsman program and the telephone number
1666 of names, addresses, and telephone numbers of the local
1667 ~~ombudsman council~~ and the central abuse hotline where they may
1668 lodge complaints.

1669 Section 42. Subsection (17) of section 744.444, Florida
1670 Statutes, is amended to read:

1671 744.444 Power of guardian without court approval.—Without
1672 obtaining court approval, a plenary guardian of the property, or
1673 a limited guardian of the property within the powers granted by
1674 the order appointing the guardian or an approved annual or
1675 amended guardianship report, may:

1676 (17) Provide confidential information about a ward that is
1677 related to an investigation arising under part I of chapter 400
1678 to a representative of the local or state ombudsman program
1679 ~~council member~~ conducting such an investigation. Any such
1680 ombudsman shall have a duty to maintain the confidentiality of
1681 such information.

1682 Section 43. This act shall take effect July 1, 2013.