

**By** the Committee on Children, Families, and Elder Affairs; and  
Senator Soto

586-04340-13

20131212c1

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.; revising the  
11          purpose of the Office of State Long-Term Care  
12          Ombudsman; establishing districts; requiring the state  
13          ombudsman to submit an annual report to the Governor,  
14          the Legislature, and specified agencies and entities;  
15          amending s. 400.0067, F.S.; revising duties and  
16          membership of the State Long-Term Care Ombudsman  
17          Council; amending s. 400.0069, F.S.; requiring the  
18          state ombudsman to designate and direct program  
19          districts; providing duties of representatives of the  
20          office in the districts; providing for appointment and  
21          qualifications of district ombudsmen; prohibiting  
22          certain individuals from serving as ombudsmen;  
23          amending s. 400.0070, F.S.; providing conditions under  
24          which a representative of the office could be found to  
25          have a conflict of interest; amending s. 400.0071,  
26          F.S.; requiring the Department of Elderly Affairs to  
27          consult with the state ombudsman before adopting rules  
28          pertaining to complaint resolution; amending s.  
29          400.0073, F.S.; providing procedures for investigation

586-04340-13

20131212c1

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

58

586-04340-13

20131212c1

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

60  
61 Section 1. Section 400.0060, Florida Statutes, is amended  
62 to read:

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

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

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

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

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

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

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

87 (7) "Ombudsman" means an individual who has been certified

586-04340-13

20131212c1

88 by the state ombudsman as meeting the requirements of ss.  
89 400.0069, 400.0070, and 400.0091 ~~the individual appointed by the~~  
90 ~~Secretary of Elderly Affairs to head the Office of State Long-~~  
91 ~~Term Care Ombudsman.~~

92 (8) "Representative of the office" means the state  
93 ombudsman, an employee of the office, or an individual certified  
94 as an ombudsman.

95 (9)~~(8)~~ "Resident" means an individual 18 ~~60~~ years of age or  
96 older who resides in a long-term care facility.

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

98 (11)~~(10)~~ "State council" means the State Long-Term Care  
99 Ombudsman Council created by s. 400.0067.

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

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

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

107 400.0061 Legislative findings and intent; long-term care  
108 facilities.—

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

586-04340-13

20131212c1

117 other concerned citizen may make a complaint against the  
118 facility or its employees~~7~~, or against other persons who are in a  
119 position to restrict, interfere with, or threaten the rights,  
120 health, safety, or welfare of a long-term care facility  
121 resident. The Legislature finds that concerned citizens are  
122 often more effective advocates for the rights of others than  
123 governmental agencies. The Legislature further finds that in  
124 order to be eligible to receive an allotment of funds authorized  
125 and appropriated under the federal Older Americans Act, the  
126 state must establish and operate an Office of State Long-Term  
127 Care Ombudsman, to be headed by the state ~~Long-Term Care~~  
128 ombudsman, and carry out a state ~~long-term care~~ ombudsman  
129 program.

130 (2) It is the intent of the Legislature, therefore, to  
131 utilize voluntary citizen ombudsmen ~~ombudsman councils~~ under the  
132 leadership of the state ombudsman~~7~~ and, through them, to operate  
133 a state ~~an~~ ombudsman program, which shall, without interference  
134 by any executive agency, undertake to discover, investigate, and  
135 determine the presence of conditions or individuals who ~~which~~  
136 constitute a threat to the rights, health, safety, or welfare of  
137 the residents of long-term care facilities. To ensure that the  
138 effectiveness and efficiency of such investigations are not  
139 impeded by advance notice or delay, the Legislature intends that  
140 representatives of the office ~~ombudsman and ombudsman councils~~  
141 ~~and their designated representatives~~ not be required to obtain  
142 warrants in order to enter into or conduct investigations or  
143 onsite administrative assessments of long-term care facilities.  
144 It is the further intent of the Legislature that the environment  
145 in long-term care facilities be conducive to the dignity and

586-04340-13

20131212c1

146 independence of residents and that investigations by  
147 representatives of the office ~~ombudsman councils shall~~ further  
148 the enforcement of laws, rules, and regulations that safeguard  
149 the health, safety, and welfare of residents.

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

152 400.0063 Establishment of Office of State Long-Term Care  
153 Ombudsman; designation of ombudsman and legal advocate.—

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

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

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

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

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

173 1. Assisting the state ombudsman in carrying out the duties  
174 of the office with respect to the abuse, neglect, exploitation,

586-04340-13

20131212c1

175 or violation of rights of residents of long-term care  
176 facilities.

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

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

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

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

190 400.0065 Office of State Long-Term Care Ombudsman; duties  
191 and responsibilities.-

192 (1) The purpose of the Office of State Long-Term Care  
193 Ombudsman is ~~shall be~~ to:

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

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

202 (c) Inform residents, their representatives, and other  
203 citizens about obtaining the services of the state ~~Long-Term~~

586-04340-13

20131212c1

204 ~~Care~~ ombudsman program and its representatives.

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

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

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

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

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

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

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

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

231 (c) Within the limits of appropriated federal and state  
232 funding, employ such personnel as are necessary to perform

586-04340-13

20131212c1

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

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

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

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

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

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

586-04340-13

20131212c1

262 Americans Act.

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

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

280 2. Evaluate the problems experienced by residents.

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

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

586-04340-13

20131212c1

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

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

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

301           400.0067 State Long-Term Care Ombudsman Council; duties;  
302 membership.—

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

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

306           (a) Serve as an advisory body to assist the state ombudsman  
307 in reaching a consensus among districts ~~local councils~~ on issues  
308 affecting residents and impacting the optimal operation of the  
309 program.

310           (b) Serve as an appellate body in receiving from the  
311 districts ~~local councils~~ complaints not resolved at the district  
312 ~~local~~ level. Any individual member or members of the state  
313 council may enter any long-term care facility involved in an  
314 appeal, pursuant to the conditions specified in s. 400.0074(2).

315           (c) Assist the state ombudsman to discover, investigate,  
316 and determine the existence of abuse or neglect in any long-term  
317 care facility, and work with the adult protective services  
318 program as required in ss. 415.101-415.113.

319           (d) Assist the state ombudsman in eliciting, receiving,

586-04340-13

20131212c1

320 responding to, and resolving complaints made by or on behalf of  
321 residents.

322 (e) Elicit and coordinate state, district local, and  
323 voluntary organizational assistance for the purpose of improving  
324 the care received by residents.

325 (f) Assist the state ombudsman in preparing the annual  
326 report described in s. 400.0065.

327 (3) The state ~~Long-Term Care Ombudsman~~ council shall be  
328 composed of one active certified ombudsman from each district  
329 ~~local council member elected by each local council~~ plus three  
330 at-large members appointed by the secretary Governor.

331 (a) Each district manager, in consultation with the  
332 district ombudsmen, shall select a district ombudsman local  
333 ~~council shall elect by majority vote a representative from among~~  
334 ~~the council members~~ to represent the interests of the district  
335 ~~local council~~ on the state council. A ~~local council chair may~~  
336 ~~not serve as the representative of the local council on the~~  
337 ~~state council.~~

338 (b)1. The state ombudsman secretary, ~~after consulting with~~  
339 ~~the ombudsman~~, shall submit to the secretary Governor a list of  
340 individuals ~~persons~~ recommended for appointment to the at-large  
341 positions on the state council. The list may ~~shall~~ not include  
342 the name of any individual ~~person~~ who is currently serving in a  
343 district ~~on a local council~~.

344 2. The secretary Governor shall appoint three at-large  
345 members chosen from the list.

346 3. If the secretary Governor does not appoint an at-large  
347 member to fill a vacant position within 60 days after the list  
348 is submitted, the state secretary, ~~after consulting with the~~

586-04340-13

20131212c1

349 ombudsman, shall appoint an at-large member to fill that vacant  
350 position.

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

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

355 (b) 3. A district manager, in consultation with the district  
356 ombudsmen, local council may recommend replacement ~~removal~~ of  
357 its selected ombudsman on elected representative ~~from~~ the state  
358 council ~~by a majority vote~~. If the district manager, in  
359 consultation with the district ombudsmen, selects a replacement  
360 ombudsman, council votes to remove its representative, the local  
361 council chair shall immediately notify the state ombudsman must  
362 be notified. ~~The secretary shall advise the Governor of the~~  
363 ~~local council's vote upon receiving notice from the ombudsman.~~

364 (c) 4. The position of any member missing three state  
365 council meetings within a 1-year period without cause may be  
366 declared vacant by the state ombudsman. The findings of the  
367 state ombudsman regarding cause shall be final and binding.

368 (d) 5. Any vacancy on the state council shall be filled in  
369 the same manner as the original appointment.

370 (e) (d) 1. The state council shall elect a chair to serve for  
371 a term of 1 year. A chair may not serve more than two  
372 consecutive terms.

373 2. The chair shall select a vice chair from among the  
374 members. The vice chair shall preside over the state council in  
375 the absence of the chair.

376 3. The chair may create additional executive positions as  
377 necessary to carry out the duties of the state council. Any

586-04340-13

20131212c1

378 person appointed to an executive position shall serve at the  
379 pleasure of the chair, and his or her term shall expire on the  
380 same day as the term of the chair.

381 4. A chair may be immediately removed from office before  
382 ~~prior to~~ the expiration of his or her term by a vote of two-  
383 thirds of all state council members present at any meeting at  
384 which a quorum is present. If a chair is removed from office  
385 before ~~prior to~~ the expiration of his or her term, a replacement  
386 chair shall be chosen during the same meeting in the same manner  
387 as described in this paragraph, and the term of the replacement  
388 chair shall begin immediately. The replacement chair shall serve  
389 for the remainder of the term and is eligible to serve two  
390 subsequent consecutive terms.

391 (f) ~~(e)~~ 1. The state council shall meet upon the call of the  
392 chair or upon the call of the state ombudsman. The state council  
393 shall meet at least quarterly but may meet more frequently as  
394 needed.

395 2. A quorum shall be considered present if more than 50  
396 percent of all active state council members are in attendance at  
397 the same meeting.

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

402 (g) ~~(f)~~ Members shall receive no compensation but shall,  
403 with approval from the state ombudsman, be reimbursed for per  
404 diem and travel expenses as provided in s. 112.061.

405 Section 6. Section 400.0069, Florida Statutes, is amended  
406 to read:

586-04340-13

20131212c1

407           400.0069 ~~Local~~ Long-term care ombudsman districts ~~councils~~;  
408 duties; appointment ~~membership~~.-

409           (1) (a) The state ombudsman shall designate districts ~~local~~  
410 ~~long-term care ombudsman councils~~ to carry out the duties of the  
411 state ~~Long-Term Care~~ ombudsman program ~~within local communities~~.  
412 Each district ~~local council~~ shall function under the direction  
413 of the state ombudsman.

414           (b) The state ombudsman shall ensure that there are  
415 representatives of the office ~~is at least one local council~~  
416 operating in each district ~~of the department's planning and~~  
417 ~~service areas. The ombudsman may create additional local~~  
418 ~~councils~~ as necessary to ensure that residents throughout the  
419 state have adequate access to state ~~Long-Term Care~~ ombudsman  
420 program services. ~~The ombudsman, after approval from the~~  
421 ~~secretary, shall designate the jurisdictional boundaries of each~~  
422 ~~local council.~~

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

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

428           (b) Discover, investigate, and determine the existence of  
429 abuse, ~~or~~ neglect, or exploitation using in any long-term care  
430 ~~facility and to use the procedures provided for in ss. 415.101-~~  
431 415.113 when applicable.

432           (c) Identify ~~Elicit, receive,~~ investigate, ~~respond to,~~ and  
433 resolve complaints made by or on behalf of residents relating to  
434 actions or omissions by providers or representatives of  
435 providers of long-term care services, other public or private

586-04340-13

20131212c1

436 agencies, guardians, or representative payees that may adversely  
437 affect the health, safety, welfare, or rights of residents.

438 (d) Review and, if necessary, comment on all existing or  
439 proposed rules, regulations, and other governmental policies and  
440 actions relating to long-term care facilities that may  
441 potentially have an effect on the rights, health, safety, and  
442 welfare of residents.

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

447 (f) Recommend that the state ombudsman and the legal  
448 advocate seek administrative, legal, and other remedies to  
449 protect the health, safety, welfare, and rights of ~~the~~  
450 residents.

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

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

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

461 (4) Each district ~~local council~~ shall be composed of  
462 ombudsmen ~~members~~ whose primary residences are ~~residence is~~  
463 located within the boundaries of the district ~~local council's~~  
464 jurisdiction.

586-04340-13

20131212c1

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

469           1. ~~At least one medical or osteopathic physician whose~~  
470 ~~practice includes or has included a substantial number of~~  
471 ~~geriatric patients and who may practice in a long-term care~~  
472 ~~facility;~~

473           2. ~~At least one registered nurse who has geriatric~~  
474 ~~experience;~~

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

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

477           5. ~~At least six nursing home residents or representative~~  
478 ~~consumer advocates for nursing home residents;~~

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

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

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

484       (b) The following individuals may not be appointed as  
485 ombudsmen:

486           1. The owner or representative of a long-term care  
487 facility.

488           2. A provider or representative of a provider of long-term  
489 care services.

490           3. An employee of the agency.

491           4. An employee of the department, except for a  
492 representative of the office.

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

586-04340-13

20131212c1

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

495 ~~In no case shall the medical director of a long-term care~~  
496 ~~facility or an employee of the agency, the department, the~~  
497 ~~Department of Children and Family Services, or the Agency for~~  
498 ~~Persons with Disabilities serve as a member or as an ex officio~~  
499 ~~member of a council.~~

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

501 1. Individuals wishing to join a local council shall Submit  
502 an application to the state ombudsman or his or her designee.

503 2. Successfully complete level 2 background screening  
504 pursuant to s. 430.0402 and chapter 435. The ombudsman shall  
505 review the individual's application and advise the secretary of  
506 his or her recommendation for approval or disapproval of the  
507 candidate's membership on the local council. If the secretary  
508 approves of the individual's membership, the individual shall be  
509 appointed as a member of the local council.

510 (b) The state ombudsman shall approve or deny the  
511 appointment of the individual as an ombudsman. The secretary may  
512 rescind the ombudsman's approval of a member on a local council  
513 at any time. If the secretary rescinds the approval of a member  
514 on a local council, the ombudsman shall ensure that the  
515 individual is immediately removed from the local council on  
516 which he or she serves and the individual may no longer  
517 represent the State Long-Term Care Ombudsman Program until the  
518 secretary provides his or her approval.

519 (c) Upon appointment as an ombudsman, the individual may  
520 participate in district activities but may not represent the  
521 office or conduct any authorized program duties until the  
522 individual has completed the initial training specified in s.

586-04340-13

20131212c1

523 400.0091(1) and has been certified by the state ombudsman.

524 (d) The state ombudsman, for good cause shown, such as  
525 development of a conflict of interest, failure to adhere to the  
526 policies and procedures established by the office, or  
527 demonstrated inability to carry out the responsibilities of the  
528 office, may rescind the appointment of an individual as an  
529 ombudsman. After the appointment is rescinded, the individual  
530 may not conduct any duties as an ombudsman and may not represent  
531 the office or the state ombudsman program. ~~A local council may~~  
532 ~~recommend the removal of one or more of its members by~~  
533 ~~submitting to the ombudsman a resolution adopted by a two-thirds~~  
534 ~~vote of the members of the council stating the name of the~~  
535 ~~member or members recommended for removal and the reasons for~~  
536 ~~the recommendation. If such a recommendation is adopted by a~~  
537 ~~local council, the local council chair or district coordinator~~  
538 ~~shall immediately report the council's recommendation to the~~  
539 ~~ombudsman. The ombudsman shall review the recommendation of the~~  
540 ~~local council and advise the secretary of his or her~~  
541 ~~recommendation regarding removal of the council member or~~  
542 ~~members.~~

543 ~~(6) (a) Each local council shall elect a chair for a term of~~  
544 ~~1 year. There shall be no limitation on the number of terms that~~  
545 ~~an approved member of a local council may serve as chair.~~

546 ~~(b) The chair shall select a vice chair from among the~~  
547 ~~members of the council. The vice chair shall preside over the~~  
548 ~~council in the absence of the chair.~~

549 ~~(c) The chair may create additional executive positions as~~  
550 ~~necessary to carry out the duties of the local council. Any~~  
551 ~~person appointed to an executive position shall serve at the~~

586-04340-13

20131212c1

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

554 ~~(d) A chair may be immediately removed from office prior to~~  
555 ~~the expiration of his or her term by a vote of two-thirds of the~~  
556 ~~members of the local council. If any chair is removed from~~  
557 ~~office prior to the expiration of his or her term, a replacement~~  
558 ~~chair shall be elected during the same meeting, and the term of~~  
559 ~~the replacement chair shall begin immediately. The replacement~~  
560 ~~chair shall serve for the remainder of the term of the person he~~  
561 ~~or she replaced.~~

562 ~~(7) Each local council shall meet upon the call of its~~  
563 ~~chair or upon the call of the ombudsman. Each local council~~  
564 ~~shall meet at least once a month but may meet more frequently if~~  
565 ~~necessary.~~

566 ~~(6)(8) An ombudsman may not~~ A member of a local council  
567 ~~shall~~ receive ~~no~~ compensation but shall, with approval from the  
568 state ombudsman, be reimbursed for travel expenses ~~both within~~  
569 ~~and outside the jurisdiction of the local council~~ in accordance  
570 with ~~the provisions of s. 112.061.~~

571 ~~(7)(9) The representatives of the office~~ local councils are  
572 authorized to call upon appropriate state agencies ~~of state~~  
573 ~~government~~ for such professional assistance as ~~may be~~ needed in  
574 the discharge of their duties, and such. ~~All~~ state agencies  
575 shall cooperate ~~with the local councils~~ in providing requested  
576 information and agency representation ~~at council meetings.~~

577 Section 7. Section 400.0070, Florida Statutes, is amended  
578 to read:

579 400.0070 Conflicts of interest.—

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

586-04340-13

20131212c1

581 (a) Have a direct involvement in the licensing or  
582 certification of, or an ownership or investment interest in, a  
583 long-term care facility or a provider of a long-term care  
584 service.

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

587 (c) Receive, or have a right to receive, directly or  
588 indirectly, remuneration, in cash or in kind, under a  
589 compensation agreement with the owner or operator of a long-term  
590 care facility.

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

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

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

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

605 Section 8. Section 400.0071, Florida Statutes, is amended  
606 to read:

607 400.0071 State ~~Long-Term Care~~ ombudsman program complaint  
608 procedures.—The department, in consultation with the state  
609 ombudsman, shall adopt rules implementing state and local

586-04340-13

20131212c1

610 complaint procedures. The rules must include procedures for  
611 receiving, investigating, identifying, and resolving complaints  
612 concerning the health, safety, welfare, and rights of residents;

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

615 ~~(2) Conducting investigations of a long-term care facility~~  
616 ~~or an employee of a long-term care facility subsequent to~~  
617 ~~receiving a complaint.~~

618 ~~(3) Conducting onsite administrative assessments of long-~~  
619 ~~term care facilities.~~

620 Section 9. Section 400.0073, Florida Statutes, is amended  
621 to read:

622 400.0073 Complaint ~~State and local ombudsman council~~  
623 investigations.-

624 (1) A representative of the office ~~local council~~ shall  
625 identify and investigate, ~~within a reasonable time after a~~  
626 ~~complaint is made,~~ any complaint made by or on behalf of a  
627 resident that, ~~a representative of a resident, or any other~~  
628 ~~credible source based on an action or omission by an~~  
629 ~~administrator, an employee, or a representative of a long-term~~  
630 ~~care facility which might be:~~

631 (a) Contrary to law;

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

634 (c) Based on a mistake of fact;

635 (d) Based on improper or irrelevant grounds;

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

637 (f) Performed in an inefficient manner; or

638 (g) Otherwise adversely affecting the health, safety,

586-04340-13

20131212c1

639 welfare, or rights of a resident.

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

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

645 (2)~~(4)~~ If a representative of the office ~~the ombudsman or~~  
 646 ~~any state or local council member~~ is not allowed to enter a  
 647 long-term care facility, the administrator of the facility shall  
 648 be considered to have interfered with a representative of the  
 649 office, ~~the state council, or the local council~~ in the  
 650 performance of official duties as described in s. 400.0083(1)  
 651 and to have committed a violation of this part. The  
 652 representative of the office ~~ombudsman~~ shall report a facility's  
 653 refusal to allow entry to the facility to the state ombudsman or  
 654 his or her designee, who shall then report the incident to the  
 655 agency, and the agency shall record the report and take it into  
 656 consideration when determining actions allowable under s.  
 657 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.  
 658 429.71.

659 Section 10. Section 400.0074, Florida Statutes, is amended  
 660 to read:

661 400.0074 ~~Local ombudsman council~~ Onsite administrative  
 662 assessments.-

663 (1) A representative of the office must ~~In addition to any~~  
 664 ~~specific investigation conducted pursuant to a complaint, the~~  
 665 ~~local council shall~~ conduct, at least annually, an onsite  
 666 administrative assessment of each nursing home, assisted living  
 667 facility, and adult family-care home ~~within its jurisdiction.~~

586-04340-13

20131212c1

668 This administrative assessment must be resident-centered and  
669 must ~~shall~~ focus on factors affecting the rights, health,  
670 safety, and welfare of the residents. ~~Each local council is~~  
671 ~~encouraged to conduct a similar onsite administrative assessment~~  
672 ~~of each additional long-term care facility within its~~  
673 ~~jurisdiction.~~

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

676 (a) To the extent possible and reasonable, the  
677 administrative assessment ~~assessments~~ shall not duplicate the  
678 efforts of ~~the agency~~ surveys and inspections conducted by state  
679 agencies of long-term care facilities ~~under part II of this~~  
680 ~~chapter and parts I and II of chapter 429.~~

681 (b) An administrative assessment shall be conducted at a  
682 time and for a duration necessary to produce the information  
683 required to complete the assessment ~~carry out the duties of the~~  
684 ~~local council.~~

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

688 (d) A representative of the office ~~local council member~~  
689 ~~physically~~ present for the administrative assessment must ~~shall~~  
690 identify himself or herself to the administrator ~~and cite the~~  
691 ~~specific statutory authority for his or her assessment~~ of the  
692 facility or his or her designee.

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

695 (f) A representative of the office ~~local council member~~ may  
696 not enter a single-family residential unit within a long-term

586-04340-13

20131212c1

697 care facility during an administrative assessment without the  
698 permission of the resident or the representative of the  
699 resident.

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

703 ~~(3) Regardless of jurisdiction, the ombudsman may authorize~~  
704 ~~a state or local council member to assist another local council~~  
705 ~~to perform the administrative assessments described in this~~  
706 ~~section.~~

707 (3)(4) An onsite administrative assessment may not be  
708 accomplished by forcible entry. However, if a representative of  
709 the office ombudsman or a state or local council member is not  
710 allowed to enter a long-term care facility, the administrator of  
711 the facility shall be considered to have interfered with a  
712 representative of the office, ~~the state council, or the local~~  
713 ~~council~~ in the performance of official duties as described in s.  
714 400.0083(1) and to have committed a violation of this part. The  
715 representative of the office ombudsman shall report the refusal  
716 by a facility to allow entry to the state ombudsman or his or  
717 her designee, who shall then report the incident to the agency,  
718 and the agency shall record the report and take it into  
719 consideration when determining actions allowable under s.  
720 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.  
721 429.71.

722 (4) The department, in consultation with the state  
723 ombudsman, may adopt rules implementing procedures for  
724 conducting onsite administrative assessments of long-term care  
725 facilities.

586-04340-13

20131212c1

726 Section 11. Section 400.0075, Florida Statutes, is amended  
727 to read:

728 400.0075 Complaint notification and resolution procedures.—

729 (1) (a) Any complaint ~~or problem~~ verified by a  
730 representative of the office an ombudsman council as a result of  
731 an investigation may ~~or onsite administrative assessment, which~~  
732 ~~complaint or problem is determined to require remedial action by~~  
733 ~~the local council,~~ shall be identified and brought to the  
734 attention of the long-term care facility administrator subject  
735 to the confidentiality provisions of s. 400.0077 in writing.

736 Upon receipt of the information ~~such document,~~ the  
737 administrator, with the concurrence of the representative of the  
738 office local council chair, shall establish target dates for  
739 taking appropriate remedial action. If, by the target date, the  
740 remedial action is not completed or forthcoming, the  
741 representative may extend the target date if there is reason to  
742 believe such action would facilitate the resolution of the  
743 complaint, or the representative may refer the complaint to the  
744 district manager local council chair may, ~~after obtaining~~  
745 ~~approval from the ombudsman and a majority of the members of the~~  
746 ~~local council:~~

747 1. ~~Extend the target date if the chair has reason to~~  
748 ~~believe such action would facilitate the resolution of the~~  
749 ~~complaint.~~

750 2. ~~In accordance with s. 400.0077, publicize the complaint,~~  
751 ~~the recommendations of the council, and the response of the~~  
752 ~~long-term care facility.~~

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

754 (b) If an ombudsman determines ~~the local council chair~~

586-04340-13

20131212c1

755 ~~believes~~ that the health, safety, welfare, or rights of a the  
756 resident are in imminent danger, the ombudsman must immediately  
757 notify the district manager. The district manager ~~chair shall~~  
758 ~~notify the ombudsman or legal advocate, who,~~ after verifying  
759 that such imminent danger exists, must notify the appropriate  
760 state agencies, including law enforcement, the state ombudsman,  
761 and the legal advocate to ensure the protection of ~~shall seek~~  
762 ~~immediate legal or administrative remedies to protect the~~  
763 resident.

764 (c) If the state ombudsman or legal advocate has reason to  
765 believe that the long-term care facility or an employee of the  
766 facility has committed a criminal act, the state ombudsman or  
767 legal advocate shall provide the local law enforcement agency  
768 with the relevant information to initiate an investigation of  
769 the case.

770 (2) ~~(a)~~ Upon referral from a district local council, the  
771 state ombudsman or his or her designee council shall assume the  
772 responsibility for the disposition of the complaint. If a long-  
773 term care facility fails to take action to resolve or remedy the  
774 ~~on a~~ complaint ~~by the state council~~, the state ombudsman council  
775 ~~may, after obtaining approval from the ombudsman and a majority~~  
776 ~~of the state council members:~~

777 ~~(a)1-~~ In accordance with s. 400.0077, publicize the  
778 complaint, the recommendations of the representatives of the  
779 office local or state council, and the response of the long-term  
780 care facility.

781 ~~(b)2-~~ Recommend to the department and the agency a series  
782 of facility reviews pursuant to s. 400.19, s. 429.34, or s.  
783 429.67 to ensure correction and nonrecurrence of the conditions

586-04340-13

20131212c1

784 that gave ~~give~~ rise to the complaint ~~complaints~~ against the a  
785 long-term care facility.

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

789 (d)4. Recommend to the department and the agency that  
790 procedures be initiated for action against ~~revocation~~ of the  
791 long-term care facility's license in accordance with chapter  
792 120.

793 ~~(b) If the state council chair believes that the health,~~  
794 ~~safety, welfare, or rights of the resident are in imminent~~  
795 ~~danger, the chair shall notify the ombudsman or legal advocate,~~  
796 ~~who, after verifying that such imminent danger exists, shall~~  
797 ~~seek immediate legal or administrative remedies to protect the~~  
798 ~~resident.~~

799 (3)(e) If the state ombudsman, after consultation with the  
800 legal advocate, has reason to believe that the long-term care  
801 facility or an employee of the facility has committed a criminal  
802 act, the office ombudsman shall provide local law enforcement  
803 with the relevant information to initiate an investigation of  
804 the case.

805 Section 12. Section 400.0078, Florida Statutes, is amended  
806 to read:

807 400.0078 Citizen access to state ~~Long-Term Care~~ ombudsman  
808 program services.-

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

586-04340-13

20131212c1

813           (2) ~~Every resident or representative of a resident shall~~  
814 ~~receive,~~ Upon admission to a long-term care facility, each  
815 resident or representative of a resident must receive  
816 information regarding:

817           (a) The purpose of the state ~~Long-Term Care~~ ombudsman  
818 program.

819           (b) The statewide toll-free telephone number and e-mail  
820 address for receiving complaints. ~~and~~

821           (c) Information that retaliatory action cannot be taken  
822 against a resident for presenting grievances or for exercising  
823 any other resident rights.

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

826  
827 Residents or their representatives must be furnished additional  
828 copies of this information upon request.

829           Section 13. Section 400.0079, Florida Statutes, is amended  
830 to read:

831           400.0079 Immunity.—

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

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

586-04340-13

20131212c1

842 Section 14. Section 400.0081, Florida Statutes, is amended  
843 to read:

844 400.0081 Access to facilities, residents, and records.—

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

848 (a) Access to ~~Any portion of~~ the long-term care facility  
849 and residents ~~any resident as necessary to investigate or~~  
850 ~~resolve a complaint.~~

851 (b) Appropriate access to medical and social records of a  
852 resident for review ~~as necessary to investigate or resolve a~~  
853 ~~complaint,~~ if:

854 1. The representative of the office has the permission of  
855 the resident or the legal representative of the resident; or

856 2. The resident is unable to consent to the review and has  
857 no legal representative.

858 (c) Access to medical and social records of a ~~the~~ resident  
859 ~~as necessary to investigate or resolve a complaint,~~ if:

860 1. A legal representative or guardian of the resident  
861 refuses to give permission;

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

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

867 (d) Access to the administrative records, policies, and  
868 documents to which residents or the general public have access.

869 (e) Upon request, copies of all licensing and certification  
870 records maintained by the state with respect to a long-term care

586-04340-13

20131212c1

871 facility.

872 (2) The department, in consultation with the state  
873 ~~ombudsman and the state council~~, may adopt rules to establish  
874 procedures to ensure access to facilities, residents, and  
875 records as described in this section.

876 Section 15. Section 400.0083, Florida Statutes, is amended  
877 to read:

878 400.0083 Interference; retaliation; penalties.—

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

883 (2) It shall be unlawful for any person, long-term care  
884 facility, or other entity to knowingly or willfully take action  
885 or retaliate against any resident, employee, or other person for  
886 filing a complaint with, providing information to, or otherwise  
887 cooperating with any representative of the office or, the state  
888 council, ~~or a local council~~.

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

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

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

895 Section 16. Section 400.0087, Florida Statutes, is amended  
896 to read:

897 400.0087 Department oversight; funding.—

898 (1) The department shall meet the costs associated with the  
899 state ~~Long-Term Care~~ ombudsman program from funds appropriated

586-04340-13

20131212c1

900 to it.

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

905 (b) The department may divert from the federal ombudsman  
906 appropriation an amount equal to the department's administrative  
907 cost ratio to cover the costs associated with administering the  
908 state ombudsman program. The remaining allotment from the Older  
909 Americans Act program shall be expended on direct ombudsman  
910 activities.

911 (2) The department shall monitor the office and~~7~~ the state  
912 council,~~and the local councils~~ to ensure that each is carrying  
913 out the duties delegated to it by state and federal law.

914 (3) The department is responsible for ensuring that the  
915 office:

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

918 (b) Provides information to public and private agencies,  
919 legislators, and others.

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

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

926 (4) The department shall also:

927 (a) Receive and disburse state and federal funds for  
928 purposes that the state ombudsman has formulated in accordance

586-04340-13

20131212c1

929 with the Older Americans Act.

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

933 Section 17. Section 400.0089, Florida Statutes, is amended  
934 to read:

935 400.0089 Complaint data reports.—The office shall maintain  
936 a statewide uniform reporting system to collect and analyze data  
937 relating to complaints and conditions in long-term care  
938 facilities and to residents for the purpose of identifying and  
939 resolving significant complaints ~~problems~~. The office shall  
940 publish quarterly and make readily available information  
941 pertaining to the number and types of complaints received by the  
942 state ~~Long-Term Care~~ ombudsman program and shall include such  
943 information in the annual report required under s. 400.0065.

944 Section 18. Section 400.0091, Florida Statutes, is amended  
945 to read:

946 400.0091 Training.—The state ombudsman shall ensure that  
947 appropriate training is provided to all representatives  
948 ~~employees~~ of the office ~~and to the members of the state and~~  
949 ~~local councils.~~

950 (1) All representatives ~~state and local council members and~~  
951 ~~employees~~ of the office shall be given a minimum of 20 hours of  
952 training upon employment with the office or appointment as an  
953 ombudsman. Ten approval as a state or local council member and  
954 ~~10~~ hours of continuing education are required annually  
955 thereafter.

956 (2) The state ombudsman shall approve the curriculum for  
957 the initial and continuing education training, which must, at a

586-04340-13

20131212c1

- 958 minimum, address:
- 959 (a) Resident confidentiality.
  - 960 (b) Guardianships and powers of attorney.
  - 961 (c) Medication administration.
  - 962 (d) Care and medication of residents with dementia and
  - 963 Alzheimer's disease.
  - 964 (e) Accounting for residents' funds.
  - 965 (f) Discharge rights and responsibilities.
  - 966 (g) Cultural sensitivity.
  - 967 (h) Any other topic related to residency within a long-term
  - 968 care facility recommended by the secretary.

969 (3) An individual ~~No employee, officer, or representative~~

970 ~~of the office or of the state or local councils,~~ other than the

971 state ombudsman, may not hold himself or herself out as a

972 representative of the office ~~State Long-Term Care Ombudsman~~

973 ~~Program~~ or conduct any authorized program duty described in this

974 part unless the individual ~~person~~ has received the training

975 required by this section and has been certified by the state

976 ombudsman as qualified to carry out ombudsman activities on

977 behalf of the office ~~or the state or local councils.~~

978 Section 19. Subsection (4) of section 20.41, Florida

979 Statutes, is amended to read:

980 20.41 Department of Elderly Affairs.—There is created a

981 Department of Elderly Affairs.

982 (4) The department shall administer the Office of State

983 Long-Term Care Ombudsman Council, created by s. 400.0063

984 ~~400.0067, and the local long-term care ombudsman councils,~~

985 ~~created by s. 400.0069~~ and shall, as required by s. 712 of the

986 federal Older Americans Act of 1965, ensure that ~~both~~ the state

586-04340-13

20131212c1

987 ~~office operates and local long term care ombudsman councils~~  
988 ~~operate~~ in compliance with the Older Americans Act.

989 Section 20. Subsections (11) through (19) of section  
990 400.021, Florida Statutes, are renumbered as subsections (10)  
991 through (18), respectively, and present subsections (10) and  
992 (18) are amended to read:

993 400.021 Definitions.—When used in this part, unless the  
994 context otherwise requires, the term:

995 ~~(10) "Local ombudsman council" means a local long term care~~  
996 ~~ombudsman council established pursuant to s. 400.0069, located~~  
997 ~~within the Older Americans Act planning and service areas.~~

998 ~~(17)(18) "State ombudsman program council" means the Office~~  
999 ~~of State Long-Term Care Ombudsman Council~~ established pursuant  
1000 to s. 400.0063 ~~400.0067~~.

1001 Section 21. Paragraph (c) of subsection (1) and subsections  
1002 (2) and (3) of section 400.022, Florida Statutes, are amended to  
1003 read:

1004 400.022 Residents' rights.—

1005 (1) All licensees of nursing home facilities shall adopt  
1006 and make public a statement of the rights and responsibilities  
1007 of the residents of such facilities and shall treat such  
1008 residents in accordance with the provisions of that statement.  
1009 The statement shall assure each resident the following:

1010 (c) Any entity or individual that provides health, social,  
1011 legal, or other services to a resident has the right to have  
1012 reasonable access to the resident. The resident has the right to  
1013 deny or withdraw consent to access at any time by any entity or  
1014 individual. Notwithstanding the visiting policy of the facility,  
1015 the following individuals must be permitted immediate access to

586-04340-13

20131212c1

1016 the resident:

1017 1. Any representative of the federal or state government,  
 1018 including, but not limited to, representatives of the Department  
 1019 of Children and Family Services, the Department of Health, the  
 1020 Agency for Health Care Administration, the Office of the  
 1021 Attorney General, and the Department of Elderly Affairs; any law  
 1022 enforcement officer; representatives ~~members~~ of the state ~~or~~  
 1023 ~~local~~ ombudsman program council; and the resident's individual  
 1024 physician.

1025 2. Subject to the resident's right to deny or withdraw  
 1026 consent, immediate family or other relatives of the resident.

1027  
 1028 The facility must allow representatives of the state ~~Long-Term~~  
 1029 ~~Care~~ ombudsman program council to examine a resident's clinical  
 1030 records with the permission of the resident or the resident's  
 1031 legal representative and consistent with state law.

1032 (2) The licensee for each nursing home shall orally inform  
 1033 the resident of the resident's rights and provide a copy of the  
 1034 statement required by subsection (1) to each resident or the  
 1035 resident's legal representative at or before the resident's  
 1036 admission to a facility. The licensee shall provide a copy of  
 1037 the resident's rights to each staff member of the facility. Each  
 1038 such licensee shall prepare a written plan and provide  
 1039 appropriate staff training to implement ~~the provisions of this~~  
 1040 section. The written statement of rights must include a  
 1041 statement that a resident may file a complaint with the agency  
 1042 or state ~~local~~ ombudsman program council. The statement must be  
 1043 in boldfaced type and shall include the ~~name, address, and~~  
 1044 telephone number and e-mail address of the state ~~numbers of the~~

586-04340-13

20131212c1

1045 ~~local~~ ombudsman program council and the telephone number of the  
1046 central abuse hotline where complaints may be lodged.

1047 (3) Any violation of the resident's rights set forth in  
1048 this section shall constitute grounds for action by the agency  
1049 under ~~the provisions of~~ s. 400.102, s. 400.121, or part II of  
1050 chapter 408. In order to determine whether the licensee is  
1051 adequately protecting residents' rights, the licensure  
1052 inspection of the facility shall include private informal  
1053 conversations with a sample of residents to discuss residents'  
1054 experiences within the facility with respect to rights specified  
1055 in this section and general compliance with standards, and  
1056 consultation with the state ombudsman program council ~~in the~~  
1057 ~~local planning and service area of the Department of Elderly~~  
1058 ~~Affairs in which the nursing home is located.~~

1059 Section 22. Subsections (8) and (9) and (11) through (14)  
1060 of section 400.0255, Florida Statutes, are amended to read:

1061 400.0255 Resident transfer or discharge; requirements and  
1062 procedures; hearings.—

1063 (8) The notice required by subsection (7) must be in  
1064 writing and must contain all information required by state and  
1065 federal law, rules, or regulations applicable to Medicaid or  
1066 Medicare cases. The agency shall develop a standard document to  
1067 be used by all facilities licensed under this part for purposes  
1068 of notifying residents of a discharge or transfer. Such document  
1069 must include a means for a resident to request the state ~~local~~  
1070 ~~long-term care~~ ombudsman program council to review the notice  
1071 and request information about or assistance with initiating a  
1072 fair hearing with the department's Office of Appeals Hearings.  
1073 In addition to any other pertinent information included, the

586-04340-13

20131212c1

1074 form shall specify the reason allowed under federal or state law  
1075 that the resident is being discharged or transferred, with an  
1076 explanation to support this action. Further, the form shall  
1077 state the effective date of the discharge or transfer and the  
1078 location to which the resident is being discharged or  
1079 transferred. The form shall clearly describe the resident's  
1080 appeal rights and the procedures for filing an appeal, including  
1081 the right to request the state ~~local~~ ombudsman program ~~council~~  
1082 to review the notice of discharge or transfer. A copy of the  
1083 notice must be placed in the resident's clinical record, and a  
1084 copy must be transmitted to the resident's legal guardian or  
1085 representative and to the state ~~local~~ ombudsman program ~~council~~  
1086 within 5 business days after signature by the resident or  
1087 resident designee.

1088 (9) A resident may request that the state ~~local~~ ombudsman  
1089 program ~~council~~ review any notice of discharge or transfer given  
1090 to the resident. When requested by a resident to review a notice  
1091 of discharge or transfer, the state ~~local~~ ombudsman program  
1092 ~~council~~ shall do so within 7 days after receipt of the request.  
1093 The nursing home administrator, or the administrator's designee,  
1094 must forward the request for review contained in the notice to  
1095 the state ~~local~~ ombudsman program ~~council~~ within 24 hours after  
1096 such request is submitted. Failure to forward the request within  
1097 24 hours after the request is submitted shall toll the running  
1098 of the 30-day advance notice period until the request has been  
1099 forwarded.

1100 (11) Notwithstanding paragraph (10) (b), an emergency  
1101 discharge or transfer may be implemented as necessary pursuant  
1102 to state or federal law during the period of time after the

586-04340-13

20131212c1

1103 notice is given and before the time a hearing decision is  
1104 rendered. Notice of an emergency discharge or transfer to the  
1105 resident, the resident's legal guardian or representative, and  
1106 the state ~~local~~ ombudsman program ~~council~~ if requested pursuant  
1107 to subsection (9) must be by telephone or in person. This notice  
1108 shall be given before the transfer, if possible, or as soon  
1109 thereafter as practicable. A representative of the state ~~local~~  
1110 ombudsman program ~~council~~ conducting a review under this  
1111 subsection shall do so within 24 hours after receipt of the  
1112 request. The resident's file must be documented to show who was  
1113 contacted, whether the contact was by telephone or in person,  
1114 and the date and time of the contact. If the notice is not given  
1115 in writing, written notice meeting the requirements of  
1116 subsection (8) must be given the next working day.

1117 (12) After receipt of any notice required under this  
1118 section, the state ~~local~~ ombudsman program ~~council~~ may request a  
1119 private informal conversation with a resident to whom the notice  
1120 is directed, and, if known, a family member or the resident's  
1121 legal guardian or designee, to ensure that the facility is  
1122 proceeding with the discharge or transfer in accordance with ~~the~~  
1123 ~~requirements of~~ this section. If requested, the state ~~local~~  
1124 ombudsman program ~~council~~ shall assist the resident with filing  
1125 an appeal of the proposed discharge or transfer.

1126 (13) The following persons must be present at all hearings  
1127 authorized under this section:

1128 (a) The resident, or the resident's legal representative or  
1129 designee.

1130 (b) The facility administrator, or the facility's legal  
1131 representative or designee.

586-04340-13

20131212c1

1132  
1133 A representative of the state ~~local long-term care~~ ombudsman  
1134 program council may be present at all hearings authorized by  
1135 this section.

1136 (14) In any hearing under this section, the following  
1137 information concerning the parties shall be confidential and  
1138 exempt from ~~the provisions of~~ s. 119.07(1):

1139 (a) Names and addresses.

1140 (b) Medical services provided.

1141 (c) Social and economic conditions or circumstances.

1142 (d) Evaluation of personal information.

1143 (e) Medical data, including diagnosis and past history of  
1144 disease or disability.

1145 (f) Any information received verifying income eligibility  
1146 and amount of medical assistance payments. Income information  
1147 received from the Social Security Administration or the Internal  
1148 Revenue Service must be safeguarded according to the  
1149 requirements of the agency that furnished the data.

1150  
1151 The exemption created by this subsection does not prohibit  
1152 access to such information by the state ombudsman program ~~a~~  
1153 ~~local long-term care ombudsman council~~ upon request, by a  
1154 reviewing court if such information is required to be part of  
1155 the record upon subsequent review, or as specified in s. 24(a),  
1156 Art. I of the State Constitution.

1157 Section 23. Subsection (2) of section 400.1413, Florida  
1158 Statutes, is amended to read:

1159 400.1413 Volunteers in nursing homes.—

1160 (2) This section does not affect the activities of the

586-04340-13

20131212c1

1161 state ~~or local long-term care~~ ombudsman program ~~councils~~  
1162 authorized under part I.

1163 Section 24. Paragraph (d) of subsection (5) of section  
1164 400.162, Florida Statutes, is amended to read:

1165 400.162 Property and personal affairs of residents.—

1166 (5)

1167 (d) If, at any time during the period for which a license  
1168 is issued, a licensee that has not purchased a surety bond or  
1169 entered into a self-insurance agreement, as provided in  
1170 paragraphs (b) and (c), is requested to provide safekeeping for  
1171 the personal funds of a resident, the licensee shall notify the  
1172 agency of the request and make application for a surety bond or  
1173 for participation in a self-insurance agreement within 7 days  
1174 after ~~of~~ the request, exclusive of weekends and holidays. Copies  
1175 of the application, along with written documentation of related  
1176 correspondence with an insurance agency or group, shall be  
1177 maintained by the licensee for review by the agency and the  
1178 state ~~Nursing Home and Long-Term Care Facility~~ ombudsman program  
1179 ~~Council~~.

1180 Section 25. Subsections (1) and (4) of section 400.19,  
1181 Florida Statutes, are amended to read:

1182 400.19 Right of entry and inspection.—

1183 (1) In accordance with part II of chapter 408, the agency  
1184 and any duly designated officer or employee thereof or a  
1185 representative member of the state ~~Long-Term Care~~ ombudsman  
1186 program Council ~~or the local long-term care ombudsman council~~  
1187 ~~shall~~ have the right to enter upon and into the premises of any  
1188 facility licensed pursuant to this part, or any distinct nursing  
1189 home unit of a hospital licensed under chapter 395 or any

586-04340-13

20131212c1

1190 freestanding facility licensed under chapter 395 that provides  
1191 extended care or other long-term care services, at any  
1192 reasonable time in order to determine the state of compliance  
1193 with ~~the provisions of~~ this part, part II of chapter 408, and  
1194 applicable rules in force pursuant thereto. The agency shall,  
1195 within 60 days after receipt of a complaint made by a resident  
1196 or resident's representative, complete its investigation and  
1197 provide to the complainant its findings and resolution.

1198 (4) The agency shall conduct unannounced onsite facility  
1199 reviews following written verification of licensee noncompliance  
1200 in instances in which the state ombudsman program ~~a long-term~~  
1201 ~~care ombudsman council~~, pursuant to ss. 400.0071 and 400.0075,  
1202 has received a complaint and has documented deficiencies in  
1203 resident care or in the physical plant of the facility that  
1204 threaten the health, safety, or security of residents, or when  
1205 the agency documents through inspection that conditions in a  
1206 facility present a direct or indirect threat to the health,  
1207 safety, or security of residents. However, the agency shall  
1208 conduct unannounced onsite reviews every 3 months of each  
1209 facility while the facility has a conditional license.

1210 Deficiencies related to physical plant do not require followup  
1211 reviews after the agency has determined that correction of the  
1212 deficiency has been accomplished and that the correction is of  
1213 the nature that continued compliance can be reasonably expected.

1214 Section 26. Subsection (1) of section 400.191, Florida  
1215 Statutes, is amended to read:

1216 400.191 Availability, distribution, and posting of reports  
1217 and records.—

1218 (1) The agency shall provide information to the public

586-04340-13

20131212c1

1219 about all of the licensed nursing home facilities operating in  
1220 the state. The agency shall, within 60 days after a licensure  
1221 inspection visit or within 30 days after any interim visit to a  
1222 facility, send copies of the inspection reports to the state  
1223 ~~local long-term care~~ ombudsman program council, the agency's  
1224 local office, and a public library or the county seat for the  
1225 county in which the facility is located. The agency may provide  
1226 electronic access to inspection reports as a substitute for  
1227 sending copies.

1228 Section 27. Subsection (6) and paragraph (c) of subsection  
1229 (7) of section 400.23, Florida Statutes, is amended to read:

1230 400.23 Rules; evaluation and deficiencies; licensure  
1231 status.—

1232 (6) Before ~~Prior to~~ conducting a survey of the facility,  
1233 the survey team shall obtain a copy of the state ~~local long-term~~  
1234 ~~care~~ ombudsman program council report on the facility. Problems  
1235 noted in the report shall be incorporated into and followed up  
1236 through the agency's inspection process. This procedure does not  
1237 preclude the state ~~local long-term care~~ ombudsman program  
1238 ~~council~~ from requesting the agency to conduct a followup visit  
1239 to the facility.

1240 (7) The agency shall, at least every 15 months, evaluate  
1241 all nursing home facilities and make a determination as to the  
1242 degree of compliance by each licensee with the established rules  
1243 adopted under this part as a basis for assigning a licensure  
1244 status to that facility. The agency shall base its evaluation on  
1245 the most recent inspection report, taking into consideration  
1246 findings from other official reports, surveys, interviews,  
1247 investigations, and inspections. In addition to license

586-04340-13

20131212c1

1248 categories authorized under part II of chapter 408, the agency  
1249 shall assign a licensure status of standard or conditional to  
1250 each nursing home.

1251 (c) In evaluating the overall quality of care and services  
1252 and determining whether the facility will receive a conditional  
1253 or standard license, the agency shall consider the needs and  
1254 limitations of residents in the facility and the results of  
1255 interviews and surveys of a representative sampling of  
1256 residents, families of residents, representatives of the state  
1257 ombudsman program ~~council members in the planning and service~~  
1258 ~~area in which the facility is located~~, guardians of residents,  
1259 and staff of the nursing home facility.

1260 Section 28. Paragraph (a) of subsection (3), paragraph (f)  
1261 of subsection (5), and subsection (6) of section 400.235,  
1262 Florida Statutes, are amended to read:

1263 400.235 Nursing home quality and licensure status; Gold  
1264 Seal Program.—

1265 (3) (a) The Gold Seal Program shall be developed and  
1266 implemented by the Governor's Panel on Excellence in Long-Term  
1267 Care which shall operate under the authority of the Executive  
1268 Office of the Governor. The panel shall be composed of three  
1269 persons appointed by the Governor, to include a consumer  
1270 advocate for senior citizens and two persons with expertise in  
1271 the fields of quality management, service delivery excellence,  
1272 or public sector accountability; three persons appointed by the  
1273 Secretary of Elderly Affairs, to include an active member of a  
1274 nursing facility family and resident care council and a member  
1275 of the University Consortium on Aging; a representative of the  
1276 Office of State Long-Term Care Ombudsman; one person appointed

586-04340-13

20131212c1

1277 by the Florida Life Care Residents Association; one person  
1278 appointed by the State Surgeon General; two persons appointed by  
1279 the Secretary of Health Care Administration; one person  
1280 appointed by the Florida Association of Homes for the Aging; and  
1281 one person appointed by the Florida Health Care Association.  
1282 Vacancies on the panel shall be filled in the same manner as the  
1283 original appointments.

1284 (5) Facilities must meet the following additional criteria  
1285 for recognition as a Gold Seal Program facility:

1286 (f) Evidence an outstanding record regarding the number and  
1287 types of substantiated complaints reported to the Office of  
1288 State Long-Term Care Ombudsman ~~Council~~ within the 30 months  
1289 preceding application for the program.

1290  
1291 A facility assigned a conditional licensure status may not  
1292 qualify for consideration for the Gold Seal Program until after  
1293 it has operated for 30 months with no class I or class II  
1294 deficiencies and has completed a regularly scheduled relicensure  
1295 survey.

1296 (6) The agency, nursing facility industry organizations,  
1297 consumers, Office of State Long-Term Care Ombudsman ~~Council~~, and  
1298 members of the community may recommend to the Governor  
1299 facilities that meet the established criteria for consideration  
1300 for and award of the Gold Seal. The panel shall review nominees  
1301 and make a recommendation to the Governor for final approval and  
1302 award. The decision of the Governor is final and is not subject  
1303 to appeal.

1304 Section 29. Paragraph (a) of subsection (1) of section  
1305 415.1034, Florida Statutes, is amended to read:

586-04340-13

20131212c1

1306 415.1034 Mandatory reporting of abuse, neglect, or  
1307 exploitation of vulnerable adults; mandatory reports of death.-  
1308 (1) MANDATORY REPORTING.-  
1309 (a) Any person, including, but not limited to, any:  
1310 1. Physician, osteopathic physician, medical examiner,  
1311 chiropractic physician, nurse, paramedic, emergency medical  
1312 technician, or hospital personnel engaged in the admission,  
1313 examination, care, or treatment of vulnerable adults;  
1314 2. Health professional or mental health professional other  
1315 than one listed in subparagraph 1.;  
1316 3. Practitioner who relies solely on spiritual means for  
1317 healing;  
1318 4. Nursing home staff; assisted living facility staff;  
1319 adult day care center staff; adult family-care home staff;  
1320 social worker; or other professional adult care, residential, or  
1321 institutional staff;  
1322 5. State, county, or municipal criminal justice employee or  
1323 law enforcement officer;  
1324 6. ~~An~~ Employee of the Department of Business and  
1325 Professional Regulation conducting inspections of public lodging  
1326 establishments under s. 509.032;  
1327 7. Florida advocacy council member or representative of the  
1328 Office of State Long-Term Care Ombudsman ~~council member~~; or  
1329 8. Bank, savings and loan, or credit union officer,  
1330 trustee, or employee,  
1331  
1332 who knows, or has reasonable cause to suspect, that a vulnerable  
1333 adult has been or is being abused, neglected, or exploited shall  
1334 immediately report such knowledge or suspicion to the central

586-04340-13

20131212c1

1335 abuse hotline.

1336 Section 30. Subsection (1) of section 415.104, Florida  
1337 Statutes, is amended to read:

1338 415.104 Protective investigations of cases of abuse,  
1339 neglect, or exploitation of vulnerable adults; transmittal of  
1340 records to state attorney.—

1341 (1) The department shall, upon receipt of a report alleging  
1342 abuse, neglect, or exploitation of a vulnerable adult, begin  
1343 within 24 hours a protective investigation of the facts alleged  
1344 therein. If a caregiver refuses to allow the department to begin  
1345 a protective investigation or interferes with the conduct of  
1346 such an investigation, the appropriate law enforcement agency  
1347 shall be contacted for assistance. If, during the course of the  
1348 investigation, the department has reason to believe that the  
1349 abuse, neglect, or exploitation is perpetrated by a second  
1350 party, the appropriate law enforcement agency and state attorney  
1351 shall be orally notified. The department and the law enforcement  
1352 agency shall cooperate to allow the criminal investigation to  
1353 proceed concurrently with, and not be hindered by, the  
1354 protective investigation. The department shall make a  
1355 preliminary written report to the law enforcement agencies  
1356 within 5 working days after the oral report. The department  
1357 shall, within 24 hours after receipt of the report, notify the  
1358 appropriate Florida local advocacy council, or state long-term  
1359 care ombudsman program council, when appropriate, that an  
1360 alleged abuse, neglect, or exploitation perpetrated by a second  
1361 party has occurred. Notice to the Florida local advocacy council  
1362 or state long-term care ombudsman program council may be  
1363 accomplished orally or in writing and shall include the name and

586-04340-13

20131212c1

1364 location of the vulnerable adult alleged to have been abused,  
1365 neglected, or exploited and the nature of the report.

1366 Section 31. Subsection (8) of section 415.1055, Florida  
1367 Statutes, is amended to read:

1368 415.1055 Notification to administrative entities.—

1369 (8) At the conclusion of a protective investigation at a  
1370 facility, the department shall notify either the Florida local  
1371 advocacy council or state long-term care ombudsman program  
1372 ~~council~~ of the results of the investigation. This notification  
1373 must be in writing.

1374 Section 32. Subsection (2) of section 415.106, Florida  
1375 Statutes, is amended to read:

1376 415.106 Cooperation by the department and criminal justice  
1377 and other agencies.—

1378 (2) To ensure coordination, communication, and cooperation  
1379 with the investigation of abuse, neglect, or exploitation of  
1380 vulnerable adults, the department shall develop and maintain  
1381 interprogram agreements or operational procedures among  
1382 appropriate departmental programs and the Office of State Long-  
1383 Term Care Ombudsman Council, the Florida Statewide Advocacy  
1384 Council, and other agencies that provide services to vulnerable  
1385 adults. These agreements or procedures must cover such subjects  
1386 as the appropriate roles and responsibilities of the department  
1387 in identifying and responding to reports of abuse, neglect, or  
1388 exploitation of vulnerable adults; the provision of services;  
1389 and related coordinated activities.

1390 Section 33. Paragraph (g) of subsection (3) of section  
1391 415.107, Florida Statutes, is amended to read:

1392 415.107 Confidentiality of reports and records.—

586-04340-13

20131212c1

1393 (3) Access to all records, excluding the name of the  
1394 reporter which shall be released only as provided in subsection  
1395 (6), shall be granted only to the following persons, officials,  
1396 and agencies:

1397 (g) Any appropriate official of the Florida advocacy  
1398 council or state long-term-care ombudsman program ~~council~~  
1399 investigating a report of known or suspected abuse, neglect, or  
1400 exploitation of a vulnerable adult.

1401 Section 34. Subsection (20) of section 429.02, Florida  
1402 Statutes, is amended to read:

1403 429.02 Definitions.—When used in this part, the term:

1404 (20) "Resident's representative or designee" means a person  
1405 other than the owner, or an agent or employee of the facility,  
1406 designated in writing by the resident, if legally competent, to  
1407 receive notice of changes in the contract executed pursuant to  
1408 s. 429.24; to receive notice of and to participate in meetings  
1409 between the resident and the facility owner, administrator, or  
1410 staff concerning the rights of the resident; to assist the  
1411 resident in contacting the state ombudsman program ~~council~~ if  
1412 the resident has a complaint against the facility; or to bring  
1413 legal action on behalf of the resident pursuant to s. 429.29.

1414 Section 35. Paragraph (b) of subsection (3) of section  
1415 429.07, Florida Statutes, is amended to read:

1416 429.07 License required; fee.—

1417 (3) In addition to the requirements of s. 408.806, each  
1418 license granted by the agency must state the type of care for  
1419 which the license is granted. Licenses shall be issued for one  
1420 or more of the following categories of care: standard, extended  
1421 congregate care, limited nursing services, or limited mental

586-04340-13

20131212c1

1422 health.

1423 (b) An extended congregate care license shall be issued to  
1424 facilities providing, directly or through contract, services  
1425 beyond those authorized in paragraph (a), including services  
1426 performed by persons licensed under part I of chapter 464 and  
1427 supportive services, as defined by rule, to persons who would  
1428 otherwise be disqualified from continued residence in a facility  
1429 licensed under this part.

1430 1. In order for extended congregate care services to be  
1431 provided, the agency must first determine that all requirements  
1432 established in law and rule are met and must specifically  
1433 designate, on the facility's license, that such services may be  
1434 provided and whether the designation applies to all or part of  
1435 the facility. Such designation may be made at the time of  
1436 initial licensure or relicensure, or upon request in writing by  
1437 a licensee under this part and part II of chapter 408. The  
1438 notification of approval or the denial of the request shall be  
1439 made in accordance with part II of chapter 408. Existing  
1440 facilities qualifying to provide extended congregate care  
1441 services must have maintained a standard license and may not  
1442 have been subject to administrative sanctions during the  
1443 previous 2 years, or since initial licensure if the facility has  
1444 been licensed for less than 2 years, for any of the following  
1445 reasons:

1446 a. A class I or class II violation;

1447 b. Three or more repeat or recurring class III violations  
1448 of identical or similar resident care standards from which a  
1449 pattern of noncompliance is found by the agency;

1450 c. Three or more class III violations that were not

586-04340-13

20131212c1

1451 corrected in accordance with the corrective action plan approved  
1452 by the agency;

1453 d. Violation of resident care standards which results in  
1454 requiring the facility to employ the services of a consultant  
1455 pharmacist or consultant dietitian;

1456 e. Denial, suspension, or revocation of a license for  
1457 another facility licensed under this part in which the applicant  
1458 for an extended congregate care license has at least 25 percent  
1459 ownership interest; or

1460 f. Imposition of a moratorium pursuant to this part or part  
1461 II of chapter 408 or initiation of injunctive proceedings.

1462 2. A facility that is licensed to provide extended  
1463 congregate care services shall maintain a written progress  
1464 report on each person who receives services which describes the  
1465 type, amount, duration, scope, and outcome of services that are  
1466 rendered and the general status of the resident's health. A  
1467 registered nurse, or appropriate designee, representing the  
1468 agency shall visit the facility at least quarterly to monitor  
1469 residents who are receiving extended congregate care services  
1470 and to determine whether ~~if~~ the facility is in compliance with  
1471 this part, part II of chapter 408, and relevant rules. One of  
1472 the visits may be in conjunction with the regular survey. The  
1473 monitoring visits may be provided through contractual  
1474 arrangements with appropriate community agencies. A registered  
1475 nurse shall serve as part of the team that inspects the  
1476 facility. The agency may waive one of the required yearly  
1477 monitoring visits for a facility that has been licensed for at  
1478 least 24 months to provide extended congregate care services,  
1479 if, during the inspection, the registered nurse determines that

586-04340-13

20131212c1

1480 extended congregate care services are being provided  
1481 appropriately, and if the facility has no class I or class II  
1482 violations and no uncorrected class III violations. The agency  
1483 must first consult with the state ~~long-term care~~ ombudsman  
1484 program council for the area in which the facility is located to  
1485 determine whether ~~if~~ any complaints have been made and  
1486 substantiated about the quality of services or care. The agency  
1487 may not waive one of the required yearly monitoring visits if  
1488 complaints have been made and substantiated.

1489 3. A facility that is licensed to provide extended  
1490 congregate care services must:

1491 a. Demonstrate the capability to meet unanticipated  
1492 resident service needs.

1493 b. Offer a physical environment that promotes a homelike  
1494 setting, provides for resident privacy, promotes resident  
1495 independence, and allows sufficient congregate space as defined  
1496 by rule.

1497 c. Have sufficient staff available, taking into account the  
1498 physical plant and firesafety features of the building, to  
1499 assist with the evacuation of residents in an emergency.

1500 d. Adopt and follow policies and procedures that maximize  
1501 resident independence, dignity, choice, and decisionmaking to  
1502 permit residents to age in place, so that moves due to changes  
1503 in functional status are minimized or avoided.

1504 e. Allow residents or, if applicable, a resident's  
1505 representative, designee, surrogate, guardian, or attorney in  
1506 fact to make a variety of personal choices, participate in  
1507 developing service plans, and share responsibility in  
1508 decisionmaking.

586-04340-13

20131212c1

- 1509           f. Implement the concept of managed risk.
- 1510           g. Provide, directly or through contract, the services of a  
1511 person licensed under part I of chapter 464.
- 1512           h. In addition to the training mandated in s. 429.52,  
1513 provide specialized training as defined by rule for facility  
1514 staff.
- 1515           4. A facility that is licensed to provide extended  
1516 congregate care services is exempt from the criteria for  
1517 continued residency set forth in rules adopted under s. 429.41.  
1518 A licensed facility must adopt its own requirements within  
1519 guidelines for continued residency set forth by rule. However,  
1520 the facility may not serve residents who require 24-hour nursing  
1521 supervision. A licensed facility that provides extended  
1522 congregate care services must also provide each resident with a  
1523 written copy of facility policies governing admission and  
1524 retention.
- 1525           5. The primary purpose of extended congregate care services  
1526 is to allow residents, as they become more impaired, the option  
1527 of remaining in a familiar setting from which they would  
1528 otherwise be disqualified for continued residency. A facility  
1529 licensed to provide extended congregate care services may also  
1530 admit an individual who exceeds the admission criteria for a  
1531 facility with a standard license, if the individual is  
1532 determined appropriate for admission to the extended congregate  
1533 care facility.
- 1534           6. Before the admission of an individual to a facility  
1535 licensed to provide extended congregate care services, the  
1536 individual must undergo a medical examination as provided in s.  
1537 429.26(4) and the facility must develop a preliminary service

586-04340-13

20131212c1

1538 plan for the individual.

1539 7. When a facility can no longer provide or arrange for  
1540 services in accordance with the resident's service plan and  
1541 needs and the facility's policy, the facility shall make  
1542 arrangements for relocating the person in accordance with s.  
1543 429.28(1)(k).

1544 8. Failure to provide extended congregate care services may  
1545 result in denial of extended congregate care license renewal.

1546 Section 36. Subsection (9) of section 429.19, Florida  
1547 Statutes, is amended to read:

1548 429.19 Violations; imposition of administrative fines;  
1549 grounds.—

1550 (9) The agency shall develop and disseminate an annual list  
1551 of all facilities sanctioned or fined for violations of state  
1552 standards, the number and class of violations involved, the  
1553 penalties imposed, and the current status of cases. The list  
1554 shall be disseminated, at no charge, to the Department of  
1555 Elderly Affairs, the Department of Health, the Department of  
1556 Children and Families ~~Family Services~~, the Agency for Persons  
1557 with Disabilities, the area agencies on aging, the Florida  
1558 Statewide Advocacy Council, and the state ~~and local~~ ombudsman  
1559 program councils. The Department of Children and Families ~~Family~~  
1560 ~~Services~~ shall disseminate the list to service providers under  
1561 contract to the department who are responsible for referring  
1562 persons to a facility for residency. The agency may charge a fee  
1563 commensurate with the cost of printing and postage to other  
1564 interested parties requesting a copy of this list. This  
1565 information may be provided electronically or through the  
1566 agency's Internet site.

586-04340-13

20131212c1

1567 Section 37. Subsection (8) of section 429.26, Florida  
1568 Statutes, is amended to read:

1569 429.26 Appropriateness of placements; examinations of  
1570 residents.—

1571 (8) The Department of Children and Families ~~Family Services~~  
1572 may require an examination for supplemental security income and  
1573 optional state supplementation recipients residing in facilities  
1574 at any time and shall provide the examination whenever a  
1575 resident's condition requires it. Any facility administrator;  
1576 personnel of the agency, the department, or the Department of  
1577 Children and Families ~~Family Services~~; or representative of the  
1578 state long-term care ombudsman program council member who  
1579 believes a resident needs to be evaluated shall notify the  
1580 resident's case manager, who shall take appropriate action. A  
1581 report of the examination findings shall be provided to the  
1582 resident's case manager and the facility administrator to help  
1583 the administrator meet his or her responsibilities under  
1584 subsection (1).

1585 Section 38. Subsection (2) and paragraph (b) of subsection  
1586 (3) of section 429.28, Florida Statutes, are amended to read:

1587 429.28 Resident bill of rights.—

1588 (2) The administrator of a facility shall ensure that a  
1589 written notice of the rights, obligations, and prohibitions set  
1590 forth in this part is posted in a prominent place in each  
1591 facility and read or explained to residents who cannot read.  
1592 This notice shall include the statewide toll-free telephone  
1593 number and e-mail address ~~name, address, and telephone numbers~~  
1594 of the state local ~~local~~ ombudsman program council and central abuse  
1595 hotline and, when applicable, the Advocacy Center for Persons

586-04340-13

20131212c1

1596 with Disabilities, Inc., and the Florida local advocacy council,  
1597 where complaints may be lodged. The facility must ensure a  
1598 resident's access to a telephone to call the state local  
1599 ombudsman program council, central abuse hotline, Advocacy  
1600 Center for Persons with Disabilities, Inc., and the Florida  
1601 local advocacy council.

1602 (3)

1603 (b) In order to determine whether the facility is  
1604 adequately protecting residents' rights, the biennial survey  
1605 shall include private informal conversations with a sample of  
1606 residents and consultation with the state ombudsman program  
1607 ~~council~~ in the planning and service area in which the facility  
1608 is located to discuss residents' experiences within the  
1609 facility.

1610 Section 39. Section 429.34, Florida Statutes, is amended to  
1611 read:

1612 429.34 Right of entry and inspection.—In addition to the  
1613 requirements of s. 408.811, any duly designated officer or  
1614 employee of the department, the Department of Children and  
1615 Families Family Services, the Medicaid Fraud Control Unit of the  
1616 Office of the Attorney General, the state or local fire marshal,  
1617 or a representative member of the state ~~or local long-term care~~  
1618 ombudsman program has council shall have the right to enter  
1619 unannounced upon and into the premises of any facility licensed  
1620 pursuant to this part in order to determine the state of  
1621 compliance with ~~the provisions of~~ this part, part II of chapter  
1622 408, and applicable rules. Data collected by the state ~~or local~~  
1623 ~~long-term care ombudsman program councils~~ or the state or local  
1624 advocacy councils may be used by the agency in investigations

586-04340-13

20131212c1

1625 involving violations of regulatory standards.

1626 Section 40. Subsection (2) of section 429.35, Florida  
1627 Statutes, is amended to read:

1628 429.35 Maintenance of records; reports.—

1629 (2) Within 60 days after the date of the biennial  
1630 inspection visit required under s. 408.811 or within 30 days  
1631 after the date of any interim visit, the agency shall forward  
1632 the results of the inspection to the state local ombudsman  
1633 ~~program council in whose planning and service area, as defined~~  
1634 ~~in part II of chapter 400, the facility is located;~~ to at least  
1635 one public library or, in the absence of a public library, the  
1636 county seat in the county in which the inspected assisted living  
1637 facility is located; and, when appropriate, to the district  
1638 Adult Services and Mental Health Program Offices.

1639 Section 41. Subsection (2) of section 429.85, Florida  
1640 Statutes, is amended to read:

1641 429.85 Residents' bill of rights.—

1642 (2) The provider shall ensure that residents and their  
1643 legal representatives are made aware of the rights, obligations,  
1644 and prohibitions set forth in this part. Residents must also be  
1645 given the statewide toll-free telephone number and e-mail  
1646 address of the state ombudsman program and the telephone number  
1647 ~~of names, addresses, and telephone numbers of the local~~  
1648 ~~ombudsman council~~ and the central abuse hotline where they may  
1649 lodge complaints.

1650 Section 42. Subsection (17) of section 744.444, Florida  
1651 Statutes, is amended to read:

1652 744.444 Power of guardian without court approval.—Without  
1653 obtaining court approval, a plenary guardian of the property, or

586-04340-13

20131212c1

1654 a limited guardian of the property within the powers granted by  
1655 the order appointing the guardian or an approved annual or  
1656 amended guardianship report, may:

1657 (17) Provide confidential information about a ward that is  
1658 related to an investigation arising under part I of chapter 400  
1659 to a representative of the local or state ombudsman program  
1660 ~~council member~~ conducting such an investigation. Any such  
1661 ombudsman has ~~shall have~~ a duty to maintain the confidentiality  
1662 of such information.

1663 Section 43. This act shall take effect July 1, 2013.