



165050

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

---

Senator Soto moved the following:

**Senate Amendment (with title amendment)**

Between lines 3877 and 3878  
insert:

Section 87. Subsection (4) of section 20.41, Florida Statutes, is amended to read:

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

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



165050

14 office operates ~~and local long-term care ombudsman councils~~  
15 ~~operate~~ in compliance with the Older Americans Act.

16 Section 88. Subsections (11) through (19) of section  
17 400.021, Florida Statutes, are renumbered as subsections (10)  
18 through (18), respectively, and present subsections (10) and  
19 (18) are amended, to read:

20 400.021 Definitions.—When used in this part, unless the  
21 context otherwise requires, the term:

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

25 (17) ~~(18)~~ "State ombudsman program council" means the Office  
26 of State Long-Term Care Ombudsman Council established pursuant  
27 to s. 400.0063 ~~400.0067~~.

28 Section 89. Paragraph (c) of subsection (1) and subsections  
29 (2) and (3) of section 400.022, Florida Statutes, are amended to  
30 read:

31 400.022 Residents' rights.—

32 (1) All licensees of nursing home facilities shall adopt  
33 and make public a statement of the rights and responsibilities  
34 of the residents of such facilities and shall treat such  
35 residents in accordance with the provisions of that statement.  
36 The statement shall assure each resident the following:

37 (c) Any entity or individual that provides health, social,  
38 legal, or other services to a resident has the right to have  
39 reasonable access to the resident. The resident has the right to  
40 deny or withdraw consent to access at any time by any entity or  
41 individual. Notwithstanding the visiting policy of the facility,  
42 the following individuals must be permitted immediate access to



165050

43 the resident:

44 1. Any representative of the federal or state government,  
45 including, but not limited to, representatives of the Department  
46 of Children and Family Services, the Department of Health, the  
47 Agency for Health Care Administration, the Office of the  
48 Attorney General, and the Department of Elderly Affairs; any law  
49 enforcement officer; representatives ~~members~~ of the state ~~or~~  
50 ~~local~~ ombudsman program council; and the resident's individual  
51 physician.

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

54  
55 The facility must allow representatives of the state ~~Long-Term~~  
56 ~~Care~~ ombudsman program Council to examine a resident's clinical  
57 records with the permission of the resident or the resident's  
58 legal representative and consistent with state law.

59 (2) The licensee for each nursing home shall orally inform  
60 the resident of the resident's rights and provide a copy of the  
61 statement required by subsection (1) to each resident or the  
62 resident's legal representative at or before the resident's  
63 admission to a facility. The licensee shall provide a copy of  
64 the resident's rights to each staff member of the facility. Each  
65 such licensee shall prepare a written plan and provide  
66 appropriate staff training to implement ~~the provisions of this~~  
67 section. The written statement of rights must include a  
68 statement that a resident may file a complaint with the agency  
69 or state ~~local~~ ombudsman program council. The statement must be  
70 in boldfaced type and shall include the ~~name, address, and~~  
71 telephone number and e-mail address of the state ~~numbers of the~~



165050

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

74 (3) Any violation of the resident's rights set forth in  
75 this section shall constitute grounds for action by the agency  
76 under ~~the provisions of~~ s. 400.102, s. 400.121, or part II of  
77 chapter 408. In order to determine whether the licensee is  
78 adequately protecting residents' rights, the licensure  
79 inspection of the facility shall include private informal  
80 conversations with a sample of residents to discuss residents'  
81 experiences within the facility with respect to rights specified  
82 in this section and general compliance with standards, and  
83 consultation with the state ombudsman program council ~~in the~~  
84 ~~local planning and service area of the Department of Elderly~~  
85 ~~Affairs in which the nursing home is located.~~

86 Section 90. Subsections (8), (9), and (11) through (14) of  
87 section 400.0255, Florida Statutes, are amended to read:

88 400.0255 Resident transfer or discharge; requirements and  
89 procedures; hearings.-

90 (8) The notice required by subsection (7) must be in  
91 writing and must contain all information required by state and  
92 federal law, rules, or regulations applicable to Medicaid or  
93 Medicare cases. The agency shall develop a standard document to  
94 be used by all facilities licensed under this part for purposes  
95 of notifying residents of a discharge or transfer. Such document  
96 must include a means for a resident to request the state ~~local~~  
97 ~~long-term care~~ ombudsman program council to review the notice  
98 and request information about or assistance with initiating a  
99 fair hearing with the department's Office of Appeals Hearings.  
100 In addition to any other pertinent information included, the



165050

101 form shall specify the reason allowed under federal or state law  
102 that the resident is being discharged or transferred, with an  
103 explanation to support this action. Further, the form shall  
104 state the effective date of the discharge or transfer and the  
105 location to which the resident is being discharged or  
106 transferred. The form shall clearly describe the resident's  
107 appeal rights and the procedures for filing an appeal, including  
108 the right to request the state ~~local~~ ombudsman program ~~council~~  
109 to review the notice of discharge or transfer. A copy of the  
110 notice must be placed in the resident's clinical record, and a  
111 copy must be transmitted to the resident's legal guardian or  
112 representative and to the state ~~local~~ ombudsman program ~~council~~  
113 within 5 business days after signature by the resident or  
114 resident designee.

115 (9) A resident may request that the state ~~local~~ ombudsman  
116 program ~~council~~ review any notice of discharge or transfer given  
117 to the resident. When requested by a resident to review a notice  
118 of discharge or transfer, the state ~~local~~ ombudsman program  
119 ~~council~~ shall do so within 7 days after receipt of the request.  
120 The nursing home administrator, or the administrator's designee,  
121 must forward the request for review contained in the notice to  
122 the state ~~local~~ ombudsman program ~~council~~ within 24 hours after  
123 such request is submitted. Failure to forward the request within  
124 24 hours after the request is submitted shall toll the running  
125 of the 30-day advance notice period until the request has been  
126 forwarded.

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



165050

130 notice is given and before the time a hearing decision is  
131 rendered. Notice of an emergency discharge or transfer to the  
132 resident, the resident's legal guardian or representative, and  
133 the state ~~local~~ ombudsman program ~~council~~ if requested pursuant  
134 to subsection (9) must be by telephone or in person. This notice  
135 shall be given before the transfer, if possible, or as soon  
136 thereafter as practicable. A representative of the state ~~local~~  
137 ombudsman program ~~council~~ conducting a review under this  
138 subsection shall do so within 24 hours after receipt of the  
139 request. The resident's file must be documented to show who was  
140 contacted, whether the contact was by telephone or in person,  
141 and the date and time of the contact. If the notice is not given  
142 in writing, written notice meeting the requirements of  
143 subsection (8) must be given the next working day.

144 (12) After receipt of any notice required under this  
145 section, the state ~~local~~ ombudsman program ~~council~~ may request a  
146 private informal conversation with a resident to whom the notice  
147 is directed, and, if known, a family member or the resident's  
148 legal guardian or designee, to ensure that the facility is  
149 proceeding with the discharge or transfer in accordance with ~~the~~  
150 ~~requirements of~~ this section. If requested, the state ~~local~~  
151 ombudsman program ~~council~~ shall assist the resident with filing  
152 an appeal of the proposed discharge or transfer.

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

155 (a) The resident, or the resident's legal representative or  
156 designee.

157 (b) The facility administrator, or the facility's legal  
158 representative or designee.



165050

159  
160 A representative of the state ~~local long-term care~~ ombudsman  
161 program council may be present at all hearings authorized by  
162 this section.

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

166 (a) Names and addresses.

167 (b) Medical services provided.

168 (c) Social and economic conditions or circumstances.

169 (d) Evaluation of personal information.

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

172 (f) Any information received verifying income eligibility  
173 and amount of medical assistance payments. Income information  
174 received from the Social Security Administration or the Internal  
175 Revenue Service must be safeguarded according to the  
176 requirements of the agency that furnished the data.

177  
178 The exemption created by this subsection does not prohibit  
179 access to such information by the state ombudsman program ~~a~~  
180 ~~local long-term care ombudsman council~~ upon request, by a  
181 reviewing court if such information is required to be part of  
182 the record upon subsequent review, or as specified in s. 24(a),  
183 Art. I of the State Constitution.

184 Section 91. Subsection (2) of section 400.1413, Florida  
185 Statutes, is amended to read:

186 400.1413 Volunteers in nursing homes.-

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



165050

188 ~~state or local long term care~~ ombudsman program councils  
189 authorized under part I.

190 Section 92. Paragraph (d) of subsection (5) of section  
191 400.162, Florida Statutes, is amended to read:

192 400.162 Property and personal affairs of residents.-

193 (5)

194 (d) If, at any time during the period for which a license  
195 is issued, a licensee that has not purchased a surety bond or  
196 entered into a self-insurance agreement, as provided in  
197 paragraphs (b) and (c), is requested to provide safekeeping for  
198 the personal funds of a resident, the licensee shall notify the  
199 agency of the request and make application for a surety bond or  
200 for participation in a self-insurance agreement within 7 days  
201 after ~~of~~ the request, exclusive of weekends and holidays. Copies  
202 of the application, along with written documentation of related  
203 correspondence with an insurance agency or group, shall be  
204 maintained by the licensee for review by the agency and the  
205 state ~~Nursing Home and Long-Term Care Facility~~ ombudsman program  
206 Council.

207 Section 93. Subsections (1) and (4) of section 400.19,  
208 Florida Statutes, are amended to read:

209 400.19 Right of entry and inspection.-

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





165050

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

225 (4) The agency shall conduct unannounced onsite facility  
226 reviews following written verification of licensee noncompliance  
227 in instances in which the state ombudsman program ~~a long-term~~  
228 ~~care ombudsman council~~, pursuant to ss. 400.0071 and 400.0075,  
229 has received a complaint and has documented deficiencies in  
230 resident care or in the physical plant of the facility that  
231 threaten the health, safety, or security of residents, or when  
232 the agency documents through inspection that conditions in a  
233 facility present a direct or indirect threat to the health,  
234 safety, or security of residents. However, the agency shall  
235 conduct unannounced onsite reviews every 3 months of each  
236 facility while the facility has a conditional license.  
237 Deficiencies related to physical plant do not require followup  
238 reviews after the agency has determined that correction of the  
239 deficiency has been accomplished and that the correction is of  
240 the nature that continued compliance can be reasonably expected.

241 Section 94. Subsection (1) of section 400.191, Florida  
242 Statutes, is amended to read:

243 400.191 Availability, distribution, and posting of reports  
244 and records.—

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



165050

246 about all of the licensed nursing home facilities operating in  
247 the state. The agency shall, within 60 days after a licensure  
248 inspection visit or within 30 days after any interim visit to a  
249 facility, send copies of the inspection reports to the state  
250 ~~local long-term care~~ ombudsman program council, the agency's  
251 local office, and a public library or the county seat for the  
252 county in which the facility is located. The agency may provide  
253 electronic access to inspection reports as a substitute for  
254 sending copies.

255 Section 95. Subsection (6) and paragraph (c) of subsection  
256 (7) of section 400.23, Florida Statutes, are amended to read:

257 400.23 Rules; evaluation and deficiencies; licensure  
258 status.-

259 (6) Before ~~Prior to~~ conducting a survey of the facility,  
260 the survey team shall obtain a copy of the state ~~local long-term~~  
261 ~~care~~ ombudsman program council report on the facility. Problems  
262 noted in the report shall be incorporated into and followed up  
263 through the agency's inspection process. This procedure does not  
264 preclude the state ~~local long-term care~~ ombudsman program  
265 ~~council~~ from requesting the agency to conduct a followup visit  
266 to the facility.

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



165050

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

278 (c) In evaluating the overall quality of care and services  
279 and determining whether the facility will receive a conditional  
280 or standard license, the agency shall consider the needs and  
281 limitations of residents in the facility and the results of  
282 interviews and surveys of a representative sampling of  
283 residents, families of residents, representatives of the state  
284 ombudsman program ~~council members in the planning and service~~  
285 ~~area in which the facility is located~~, guardians of residents,  
286 and staff of the nursing home facility.

287 Section 96. Paragraph (a) of subsection (3), paragraph (f)  
288 of subsection (5), and subsection (6) of section 400.235,  
289 Florida Statutes, are amended to read:

290 400.235 Nursing home quality and licensure status; Gold  
291 Seal Program.—

292 (3) (a) The Gold Seal Program shall be developed and  
293 implemented by the Governor's Panel on Excellence in Long-Term  
294 Care which shall operate under the authority of the Executive  
295 Office of the Governor. The panel shall be composed of three  
296 persons appointed by the Governor, to include a consumer  
297 advocate for senior citizens and two persons with expertise in  
298 the fields of quality management, service delivery excellence,  
299 or public sector accountability; three persons appointed by the  
300 Secretary of Elderly Affairs, to include an active member of a  
301 nursing facility family and resident care council and a member  
302 of the University Consortium on Aging; a representative of the  
303 Office of State Long-Term Care Ombudsman; one person appointed



165050

304 by the Florida Life Care Residents Association; one person  
305 appointed by the State Surgeon General; two persons appointed by  
306 the Secretary of Health Care Administration; one person  
307 appointed by the Florida Association of Homes for the Aging; and  
308 one person appointed by the Florida Health Care Association.  
309 Vacancies on the panel shall be filled in the same manner as the  
310 original appointments.

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

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

317  
318 A facility assigned a conditional licensure status may not  
319 qualify for consideration for the Gold Seal Program until after  
320 it has operated for 30 months with no class I or class II  
321 deficiencies and has completed a regularly scheduled relicensure  
322 survey.

323 (6) The agency, nursing facility industry organizations,  
324 consumers, Office of State Long-Term Care Ombudsman ~~Council~~, and  
325 members of the community may recommend to the Governor  
326 facilities that meet the established criteria for consideration  
327 for and award of the Gold Seal. The panel shall review nominees  
328 and make a recommendation to the Governor for final approval and  
329 award. The decision of the Governor is final and is not subject  
330 to appeal.

331 Section 97. Paragraph (a) of subsection (1) of section  
332 415.1034, Florida Statutes, is amended to read:



165050

333           415.1034 Mandatory reporting of abuse, neglect, or  
334 exploitation of vulnerable adults; mandatory reports of death.—  
335           (1) MANDATORY REPORTING.—  
336           (a) Any person, including, but not limited to, any:  
337           1. Physician, osteopathic physician, medical examiner,  
338 chiropractic physician, nurse, paramedic, emergency medical  
339 technician, or hospital personnel engaged in the admission,  
340 examination, care, or treatment of vulnerable adults;  
341           2. Health professional or mental health professional other  
342 than one listed in subparagraph 1.;  
343           3. Practitioner who relies solely on spiritual means for  
344 healing;  
345           4. Nursing home staff; assisted living facility staff;  
346 adult day care center staff; adult family-care home staff;  
347 social worker; or other professional adult care, residential, or  
348 institutional staff;  
349           5. State, county, or municipal criminal justice employee or  
350 law enforcement officer;  
351           6. ~~An~~ Employee of the Department of Business and  
352 Professional Regulation conducting inspections of public lodging  
353 establishments under s. 509.032;  
354           7. Florida advocacy council member or representative of the  
355 Office of State Long-Term Care Ombudsman ~~council member~~; or  
356           8. Bank, savings and loan, or credit union officer,  
357 trustee, or employee,  
358  
359 who knows, or has reasonable cause to suspect, that a vulnerable  
360 adult has been or is being abused, neglected, or exploited shall  
361 immediately report such knowledge or suspicion to the central



165050

362 abuse hotline.

363 Section 98. Subsection (1) of section 415.104, Florida  
364 Statutes, is amended to read:

365 415.104 Protective investigations of cases of abuse,  
366 neglect, or exploitation of vulnerable adults; transmittal of  
367 records to state attorney.-

368 (1) The department shall, upon receipt of a report alleging  
369 abuse, neglect, or exploitation of a vulnerable adult, begin  
370 within 24 hours a protective investigation of the facts alleged  
371 therein. If a caregiver refuses to allow the department to begin  
372 a protective investigation or interferes with the conduct of  
373 such an investigation, the appropriate law enforcement agency  
374 shall be contacted for assistance. If, during the course of the  
375 investigation, the department has reason to believe that the  
376 abuse, neglect, or exploitation is perpetrated by a second  
377 party, the appropriate law enforcement agency and state attorney  
378 shall be orally notified. The department and the law enforcement  
379 agency shall cooperate to allow the criminal investigation to  
380 proceed concurrently with, and not be hindered by, the  
381 protective investigation. The department shall make a  
382 preliminary written report to the law enforcement agencies  
383 within 5 working days after the oral report. The department  
384 shall, within 24 hours after receipt of the report, notify the  
385 appropriate Florida local advocacy council, or state long-term  
386 ~~care~~ ombudsman program council, when appropriate, that an  
387 alleged abuse, neglect, or exploitation perpetrated by a second  
388 party has occurred. Notice to the Florida local advocacy council  
389 or state long-term care ~~ombudsman~~ program council may be  
390 accomplished orally or in writing and shall include the name and



165050

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

393 Section 99. Subsection (8) of section 415.1055, Florida  
394 Statutes, is amended to read:

395 415.1055 Notification to administrative entities.—

396 (8) At the conclusion of a protective investigation at a  
397 facility, the department shall notify either the Florida local  
398 advocacy council or state long-term-care ombudsman program  
399 ~~council~~ of the results of the investigation. This notification  
400 must be in writing.

401 Section 100. Subsection (2) of section 415.106, Florida  
402 Statutes, is amended to read:

403 415.106 Cooperation by the department and criminal justice  
404 and other agencies.—

405 (2) To ensure coordination, communication, and cooperation  
406 with the investigation of abuse, neglect, or exploitation of  
407 vulnerable adults, the department shall develop and maintain  
408 interprogram agreements or operational procedures among  
409 appropriate departmental programs and the Office of State Long-  
410 Term Care Ombudsman Council, the Florida Statewide Advocacy  
411 Council, and other agencies that provide services to vulnerable  
412 adults. These agreements or procedures must cover such subjects  
413 as the appropriate roles and responsibilities of the department  
414 in identifying and responding to reports of abuse, neglect, or  
415 exploitation of vulnerable adults; the provision of services;  
416 and related coordinated activities.

417 Section 101. Paragraph (g) of subsection (3) of section  
418 415.107, Florida Statutes, is amended to read:

419 415.107 Confidentiality of reports and records.—



165050

420 (3) Access to all records, excluding the name of the  
421 reporter which shall be released only as provided in subsection  
422 (6), shall be granted only to the following persons, officials,  
423 and agencies:

424 (g) Any appropriate official of the Florida advocacy  
425 council or state long-term care ombudsman program council  
426 investigating a report of known or suspected abuse, neglect, or  
427 exploitation of a vulnerable adult.

428 Section 102. Subsection (20) of section 429.02, Florida  
429 Statutes, is amended to read:

430 429.02 Definitions.—When used in this part, the term:

431 (20) "Resident's representative or designee" means a person  
432 other than the owner, or an agent or employee of the facility,  
433 designated in writing by the resident, if legally competent, to  
434 receive notice of changes in the contract executed pursuant to  
435 s. 429.24; to receive notice of and to participate in meetings  
436 between the resident and the facility owner, administrator, or  
437 staff concerning the rights of the resident; to assist the  
438 resident in contacting the state ombudsman program council if  
439 the resident has a complaint against the facility; or to bring  
440 legal action on behalf of the resident pursuant to s. 429.29.

441 Section 103. Subsection (2) of section 429.35, Florida  
442 Statutes, is amended to read:

443 429.35 Maintenance of records; reports.—

444 (2) Within 60 days after the date of the biennial  
445 inspection visit required under s. 408.811 or within 30 days  
446 after the date of any interim visit, the agency shall forward  
447 the results of the inspection to the state local ombudsman  
448 program council in whose planning and service area, as defined





165050

449 ~~in part II of chapter 400, the facility is located;~~ to at least  
450 one public library or, in the absence of a public library, the  
451 county seat in the county in which the inspected assisted living  
452 facility is located; and, when appropriate, to the district  
453 Adult Services and Mental Health Program Offices.

454 Section 104. Subsection (2) of section 429.85, Florida  
455 Statutes, is amended to read:

456 429.85 Residents' bill of rights.—

457 (2) The provider shall ensure that residents and their  
458 legal representatives are made aware of the rights, obligations,  
459 and prohibitions set forth in this part. Residents must also be  
460 given the statewide toll-free telephone number and e-mail  
461 address of the state ombudsman program and the telephone number  
462 of names, addresses, and telephone numbers of the local  
463 ~~ombudsman council~~ and the central abuse hotline where they may  
464 lodge complaints.

465 Section 105. Subsection (17) of section 744.444, Florida  
466 Statutes, is amended to read:

467 744.444 Power of guardian without court approval.—Without  
468 obtaining court approval, a plenary guardian of the property, or  
469 a limited guardian of the property within the powers granted by  
470 the order appointing the guardian or an approved annual or  
471 amended guardianship report, may:

472 (17) Provide confidential information about a ward that is  
473 related to an investigation arising under part I of chapter 400  
474 to a representative of the local or state ombudsman program  
475 ~~council member~~ conducting such an investigation. Any such  
476 ombudsman has ~~shall have~~ a duty to maintain the confidentiality  
477 of such information.



165050

478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 361

and insert:

development; amending ss. 20.41, 400.021, 400.022,  
400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23,  
400.235, 415.1034, 415.104, 415.1055, 415.106,  
415.107, 429.02, 429.35, 429.85, and 744.444, F.S.;  
conforming provisions to changes made by the act;  
providing an effective date.