



826374

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/01/2014	.	
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The Committee on Children, Families, and Elder Affairs (Sobel) recommended the following:

1 **Senate Amendment to Amendment (537700) (with title**
2 **amendment)**

3
4 Delete lines 510 - 675
5 and insert:

6 ~~(6)-(7) Each local council shall meet upon the call of its~~
7 ~~chair or upon the call of the ombudsman.~~ Each district local
8 ~~council~~ shall meet at least once a month but may meet more
9 frequently if necessary.

10 ~~(7)-(8) An ombudsman may not A member of a local council~~



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11 ~~shall~~ receive ~~no~~ compensation but shall, with approval from the
12 state ombudsman, be reimbursed for travel expenses ~~both within~~
13 ~~and outside the jurisdiction of the local council~~ in accordance
14 with ~~the provisions of~~ s. 112.061.

15 ~~(8)(9)~~ A representative of the office may ~~The local~~
16 ~~councils are authorized to~~ call upon appropriate state agencies
17 ~~of state government~~ for ~~such~~ professional assistance as ~~may be~~
18 needed in the discharge of his or her ~~their~~ duties, and such.
19 ~~All~~ state agencies shall cooperate ~~with the local councils~~ in
20 providing requested information and agency representation ~~at~~
21 ~~council meetings~~.

22 Section 7. Section 400.0070, Florida Statutes, is amended
23 to read:

24 400.0070 Conflicts of interest.—

25 (1) A representative of the office may ~~The ombudsman shall~~
26 not:

27 (a) Have a direct involvement in the licensing or
28 certification of, or an ownership or investment interest in, a
29 long-term care facility or a provider of a long-term care
30 service.

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

33 (c) Receive, or have a right to receive, directly or
34 indirectly, remuneration, in cash or in kind, under a
35 compensation agreement with the owner or operator of a long-term
36 care facility.

37 (2) Each representative ~~employee~~ of the office, ~~each state~~
38 ~~council member, and each local council member~~ shall certify that
39 he or she does not have any ~~has no~~ conflict of interest.



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

42 (a) Situations that constitute an individual ~~a person~~
43 having a conflict of interest which ~~that~~ could materially affect
44 the objectivity or capacity of the individual ~~a person~~ to serve
45 as a representative on an ombudsman council, ~~or as an employee~~
46 ~~of the office, while carrying out the purposes of the State~~
47 ~~Long-Term Care Ombudsman Program as specified in this part.~~

48 (b) The procedure by which an individual ~~a person~~ listed in
49 subsection (2) shall certify that he or she does not have a ~~has~~
50 ~~no~~ conflict of interest.

51 Section 8. Section 400.0071, Florida Statutes, is amended
52 to read:

53 400.0071 State ~~Long-Term Care~~ ombudsman program complaint
54 procedures.—The department, in consultation with the state
55 ombudsman, shall adopt rules implementing state and local
56 complaint procedures. The rules must include procedures for
57 receiving, investigating, identifying, and resolving complaints
58 concerning the health, safety, welfare, and rights of residents;

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

61 ~~(2) Conducting investigations of a long-term care facility~~
62 ~~or an employee of a long-term care facility subsequent to~~
63 ~~receiving a complaint.~~

64 ~~(3) Conducting onsite administrative assessments of long-~~
65 ~~term care facilities.~~

66 Section 9. Section 400.0073, Florida Statutes, is amended
67 to read:

68 400.0073 Complaint ~~State and local ombudsman council~~



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69 investigations.-

70 (1) A representative of the office ~~local council~~ shall
71 identify and investigate, ~~within a reasonable time after a~~
72 ~~complaint is made,~~ any complaint made by or on behalf of a
73 resident, ~~a representative of a resident, or any other credible~~
74 ~~source based on an action or omission by an administrator, an~~
75 ~~employee, or a representative of a long term care facility~~ which
76 might be:

- 77 (a) Contrary to law;
- 78 (b) Unreasonable, unfair, oppressive, or unnecessarily
79 discriminatory, even though in accordance with law;
- 80 (c) Based on a mistake of fact;
- 81 (d) Based on improper or irrelevant grounds;
- 82 (e) Unaccompanied by an adequate statement of reasons;
- 83 (f) Performed in an inefficient manner; or
- 84 (g) Otherwise adversely affecting the health, safety,
85 welfare, or rights of a resident.

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

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

91 (2)(4) If a representative of the office ~~the ombudsman or~~
92 ~~any state or local council member~~ is not allowed to enter a
93 long-term care facility, the administrator of the facility shall
94 be considered to have interfered with a representative of the
95 office, ~~the state council, or the local council~~ in the
96 performance of official duties as described in s. 400.0083(1)
97 and to have violated ~~committed a violation of~~ this part. The



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98 representative of the office ~~ombudsman~~ shall report a facility's
99 refusal to allow entry to the ~~facility~~ to the state ombudsman or
100 his or her designee, who shall report the incident to the
101 agency, and the agency shall record the report and take it into
102 consideration when determining actions allowable under s.
103 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
104 429.71. If the facility refuses to allow entry to the
105 representative and if the representative believes that the
106 resident's health, safety, or welfare is in immediate danger,
107 the representative shall also report the incident to a local law
108 enforcement agency.

109 Section 10. Section 400.0074, Florida Statutes, is amended
110 to read:

111 400.0074 ~~Local ombudsman council~~ Onsite administrative
112 assessments.—

113 (1) A representative of the office shall ~~In addition to any~~
114 ~~specific investigation conducted pursuant to a complaint, the~~
115 ~~local council shall~~ conduct, at least annually, an onsite
116 administrative assessment of each nursing home, assisted living
117 facility, and adult family-care home ~~within its jurisdiction.~~
118 This administrative assessment must be resident-centered and
119 must shall focus on factors affecting the rights, health,
120 safety, and welfare of the residents. ~~Each local council is~~
121 ~~encouraged to conduct a similar onsite administrative assessment~~
122 ~~of each additional long-term care facility within its~~
123 ~~jurisdiction.~~

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

126 (a) To the extent possible and reasonable, the



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127 administrative assessment may ~~assessments shall~~ not duplicate
128 the efforts of ~~the agency~~ surveys and inspections conducted by
129 state agencies of long-term care facilities ~~under part II of~~
130 ~~this chapter and parts I and II of chapter 429.~~

131 (b) An administrative assessment shall be conducted at a
132 time and for a duration necessary to produce the information
133 required to complete the assessment ~~carry out the duties of the~~
134 ~~local council.~~

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

138 (d) A representative of the office ~~local council member~~
139 ~~physically~~ present for the administrative assessment must ~~shall~~
140 identify himself or herself to the administrator ~~and cite the~~
141 ~~specific statutory authority for his or her assessment of the~~
142 facility or his or her designee.

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

145 (f) A representative of the office ~~local council member~~ may
146 not enter a single-family residential unit within a long-term
147 care facility during an administrative assessment without the
148 permission of the resident or the representative of the
149 resident.

150 (g) An administrative assessment shall ~~must~~ be conducted in
151 a manner that does not impose an ~~will impose no~~ unreasonable
152 burden on a long-term care facility.

153 (3) ~~Regardless of jurisdiction, the ombudsman may authorize~~
154 ~~a state or local council member to assist another local council~~
155 ~~to perform the administrative assessments described in this~~



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156 ~~section.~~

157 ~~(4)~~ An onsite administrative assessment may not be
158 accomplished by forcible entry. However, if a representative of
159 the office ombudsman or a state or local council member is not
160 allowed to enter a long-term care facility, the administrator of
161 the facility shall be considered to have interfered with a
162 representative of the office, ~~the state council, or the local~~
163 ~~council~~ in the performance of official duties as described in s.
164 400.0083(1) and to have committed a violation of this part. The
165 representative of the office ombudsman shall report the refusal
166 by a facility to allow entry to the state ombudsman or his or
167 her designee, who shall then report the incident to the agency,
168 and the agency shall record the report and take it into
169 consideration when determining actions allowable under s.
170 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
171 429.71.

172 (4) The department, in consultation with the state
173 ombudsman, shall adopt rules implementing procedures for
174 conducting onsite administrative assessments of long-term care
175 facilities.

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

178 And the title is amended as follows:

179 Delete lines 1722 - 1736

180 and insert:

181 deleting provisions that provide for an election of a
182 chair of a local council; amending s. 400.0070, F.S.;

183 providing conditions under which a representative of
184 the office could be found to have a conflict of



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185 interest; requiring the Department of Elderly Affairs,
186 in consultation with the state ombudsman, to define by
187 rule what constitutes a conflict of interest; amending
188 s. 400.0071, F.S.; requiring the Department of Elderly
189 Affairs to consult with the state ombudsman to adopt
190 rules pertaining to complaint procedures; amending s.
191 400.0073, F.S.; providing procedures for investigation
192 of complaints; amending s. 400.0074, F.S.; revising
193 procedures for conducting onsite administrative
194 assessments; requiring the department to adopt