

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; revising the duties and
12 authority of the state ombudsman; 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; revising the appointments of
21 and qualifications for district ombudsmen; prohibiting
22 certain individuals from serving as ombudsmen;
23 deleting provisions that provide for an election of a
24 chair of a local council and the meeting times for the
25 local council; amending s. 400.0070, F.S.; providing
26 conditions under which a representative of the office

27 | could be found to have a conflict of interest;
28 | requiring the Department of Elderly Affairs, in
29 | consultation with the state ombudsman, to define by
30 | rule what constitutes a conflict of interest; amending
31 | s. 400.0071, F.S.; requiring the department to consult
32 | with the state ombudsman to adopt rules pertaining to
33 | complaint procedures; amending s. 400.0073, F.S.;
34 | providing procedures for investigation of complaints;
35 | amending s. 400.0074, F.S.; revising procedures for
36 | conducting onsite administrative assessments;
37 | authorizing the department to adopt rules; amending s.
38 | 400.0075, F.S.; revising complaint notification and
39 | resolution procedures; amending s. 400.0078, F.S.;
40 | providing for a resident or representative of a
41 | resident to receive additional information regarding
42 | resident rights; amending s. 400.0079, F.S.; providing
43 | immunity from liability for a representative of the
44 | office under certain circumstances; amending s.
45 | 400.0081, F.S.; requiring long-term care facilities to
46 | provide representatives of the office with access to
47 | facilities, residents, and records for certain
48 | purposes; amending s. 400.0083, F.S.; conforming
49 | provisions to changes made by the act; amending s.
50 | 400.0087, F.S.; providing for the office to coordinate
51 | ombudsman services with Disability Rights Florida;
52 | amending s. 400.0089, F.S.; conforming provisions to

53 changes made by the act; amending s. 400.0091, F.S.;

54 revising training requirements for representatives of

55 the office and ombudsmen; amending ss. 20.41, 400.021,

56 400.022, 400.0255, 400.1413, 400.162, 400.19, 400.191,

57 400.23, 400.235, 415.102, 415.1034, 415.104, 415.1055,

58 415.106, 415.107, 429.02, 429.07, 429.19, 429.26,

59 429.28, 429.34, 429.35, 429.67, 429.85, and 744.444,

60 F.S.; conforming provisions to changes made by the

61 act; providing an effective date.

62

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

64

65 Section 1. Section 400.0060, Florida Statutes, is amended

66 to read:

67 400.0060 Definitions.—When used in this part, unless the

68 context clearly dictates otherwise, the term:

69 (1) "Administrative assessment" means a review of

70 conditions in a long-term care facility which impact the rights,

71 health, safety, and welfare of residents with the purpose of

72 noting needed improvement and making recommendations to enhance

73 the quality of life for residents.

74 (2) "Agency" means the Agency for Health Care

75 Administration.

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

77 (4) "District" means a geographical area designated by the

78 state ombudsman in which individuals certified as ombudsmen

79 carry out the duties of the state ombudsman program. A district
 80 may have more than one local unit of ombudsmen. "Local council"
 81 ~~means a local long-term care ombudsman council designated by the~~
 82 ~~ombudsman pursuant to s. 400.0069. Local councils are also known~~
 83 ~~as district long-term care ombudsman councils or district~~
 84 ~~councils.~~

85 (5) "Long-term care facility" means a nursing home
 86 facility, assisted living facility, adult family-care home,
 87 board and care facility, facility in which continuing long-term
 88 care is provided, or any other similar residential adult care
 89 facility.

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

92 (7) "Ombudsman" means an individual who has been certified
 93 by the state ombudsman as meeting the requirements of ss.
 94 400.0069, 400.0070, and 400.0091 ~~the individual appointed by the~~
 95 ~~Secretary of Elderly Affairs to head the Office of State Long-~~
 96 ~~Term Care Ombudsman.~~

97 (8) "Representative of the office" means the state
 98 ombudsman, an employee of the office, or an individual certified
 99 as an ombudsman.

100 (9)-(8) "Resident" means an individual 18 ~~60~~ years of age
 101 or older who resides in a long-term care facility.

102 (10)-(9) "Secretary" means the Secretary of Elderly
 103 Affairs.

104 (11)~~(10)~~ "State council" means the State Long-Term Care
 105 Ombudsman Council created by s. 400.0067.

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

109 (13) "State ombudsman program" means the program operating
 110 under the direction of the office.

111 Section 2. Section 400.0061, Florida Statutes, is amended
 112 to read:

113 400.0061 Legislative findings and intent; long-term care
 114 facilities.—

115 (1) The Legislature finds that conditions in long-term
 116 care facilities in this state are such that the rights, health,
 117 safety, and welfare of residents are not fully ensured by rules
 118 of the Department of Elderly Affairs or the Agency for Health
 119 Care Administration or by the good faith of owners or operators
 120 of long-term care facilities. Furthermore, there is a need for a
 121 formal mechanism whereby a long-term care facility resident, a
 122 representative of a long-term care facility resident, or any
 123 other concerned citizen may make a complaint against the
 124 facility or its employees, or against other persons who are in a
 125 position to restrict, interfere with, or threaten the rights,
 126 health, safety, or welfare of a long-term care facility
 127 resident. The Legislature finds that concerned citizens are
 128 often more effective advocates for the rights of others than
 129 governmental agencies. The Legislature further finds that in

130 order to be eligible to receive an allotment of funds authorized
 131 and appropriated under the federal Older Americans Act, the
 132 state must establish and operate an Office of State Long-Term
 133 Care Ombudsman, to be headed by the state ~~Long-Term Care~~
 134 ombudsman, and carry out a state ~~long-term care~~ ombudsman
 135 program.

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

156 Section 3. Section 400.0063, Florida Statutes, is amended
157 to read:

158 400.0063 Establishment of Office of State Long-Term Care
159 Ombudsman; designation of ombudsman and legal advocate.—

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

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

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

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

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

179 1. Assisting the state ombudsman in carrying out the
180 duties of the office with respect to the abuse, neglect,

181 exploitation, or violation of rights of residents of long-term
 182 care facilities.

183 2. Assisting the state council and representatives of the
 184 office ~~local councils~~ in carrying out their responsibilities
 185 under this part.

186 3. Pursuing administrative, legal, and other appropriate
 187 remedies on behalf of residents.

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

194 Section 4. Section 400.0065, Florida Statutes, is amended
 195 to read:

196 400.0065 Office of State Long-Term Care Ombudsman; duties
 197 and responsibilities.—

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

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

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

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

211 (d) Ensure that residents have regular and timely access
 212 to the services provided through the office and that residents
 213 and complainants receive timely responses from representatives
 214 of the office to their complaints.

215 (e) Represent the interests of residents before
 216 governmental agencies and seek administrative, legal, and other
 217 remedies to protect the health, safety, welfare, and rights of
 218 the residents.

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

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

228 (h) Provide technical support for the development of
 229 resident and family councils to protect the well-being and
 230 rights of residents.

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

233 (a) Establish and coordinate districts ~~local councils~~
234 throughout the state.

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

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

251 (d) Contract for services necessary to carry out the
252 activities of the office.

253 (e) Apply for, receive, and accept grants, gifts, or other
254 payments, including, but not limited to, real property, personal
255 property, and services from a governmental entity or other

256 public or private entity or person, and make arrangements for
 257 the use of such grants, gifts, or payments.

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

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

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

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

281 ~~Secretary of Children and Family Services, and the Secretary of~~
282 ~~Health Care Administration.~~ The report must ~~shall~~, at a minimum:

283 1. Contain and analyze data collected concerning
284 complaints about and conditions in long-term care facilities and
285 the disposition of such complaints.

286 2. Evaluate the problems experienced by residents.

287 3. Analyze the successes of the state ombudsman program
288 during the preceding year, including an assessment of how
289 successfully the office ~~program~~ has carried out its
290 responsibilities under the Older Americans Act.

291 4. Provide recommendations for policy, regulatory, and
292 statutory changes designed to solve identified problems; resolve
293 residents' complaints; improve residents' lives and quality of
294 care; protect residents' rights, health, safety, and welfare;
295 and remove any barriers to the optimal operation of the state
296 ~~Long-Term Care~~ ombudsman program.

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

302 6. Contain any relevant recommendations from
303 representatives of the office ~~local councils~~ regarding program
304 functions and activities.

305 Section 5. Section 400.0067, Florida Statutes, is amended
306 to read:

307 400.0067 State Long-Term Care Ombudsman Council; duties;
 308 membership.-

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

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

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

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

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

325 (d) Assist the state ombudsman in eliciting, receiving,
 326 responding to, and resolving complaints made by or on behalf of
 327 residents.

328 (e) Elicit and coordinate state, district ~~local~~, and
 329 voluntary organizational assistance for the purpose of improving
 330 the care received by residents.

331 (f) Assist the state ombudsman in preparing the annual
 332 report described in s. 400.0065.

333 (3) The state ~~Long-Term Care Ombudsman~~ council shall be
 334 composed of one active certified ombudsman from each local unit
 335 within a district ~~local council member elected by each local~~
 336 ~~council~~ plus three at-large members appointed by the secretary
 337 ~~Governor~~.

338 (a) Each local unit in a district must select ~~council~~
 339 ~~shall elect by majority vote~~ a representative of its choice to
 340 serve from among the council members to represent the interests
 341 ~~of the local council~~ on the state council. ~~A local council chair~~
 342 ~~may not serve as the representative of the local council on the~~
 343 ~~state council.~~

344 (b)1. The state ombudsman secretary, ~~after consulting with~~
 345 ~~the ombudsman,~~ shall submit to the secretary ~~Governor~~ a list of
 346 individuals ~~persons~~ recommended for appointment to the at-large
 347 positions on the state council. The list may ~~shall~~ not include
 348 the name of any individual ~~person~~ who is currently serving in a
 349 district ~~on a local council.~~

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

352 3. If the secretary ~~Governor~~ does not appoint an at-large
 353 member to fill a vacant position within 60 days after the list
 354 is submitted, the state secretary, ~~after consulting with the~~
 355 ~~ombudsman,~~ shall appoint an at-large member to fill that vacant
 356 position.

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

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

361 ~~(b)3.~~ A district manager, in consultation with the
362 district ombudsmen, ~~local council~~ may recommend replacement
363 ~~removal~~ of its selected ombudsman ~~elected representative~~ from
364 the state council ~~by a majority vote~~. If the district manager,
365 in consultation with the district ombudsmen, selects a
366 replacement ombudsman, the district manager ~~council votes to~~
367 ~~remove its representative~~, the ~~local council chair~~ shall
368 ~~immediately~~ notify the state ombudsman. ~~The secretary shall~~
369 ~~advise the Governor of the local council's vote upon receiving~~
370 ~~notice from the ombudsman.~~

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

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

377 ~~(e)(d)1.~~ The state council shall elect a chair to serve
378 for a term of 1 year. A chair may not serve more than two
379 consecutive terms.

380 2. The chair shall select a vice chair from among the
381 members. The vice chair shall preside over the state council in
382 the absence of the chair.

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

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

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

398 (f) ~~(e)~~1. The state council shall meet upon the call of the
399 chair or upon the call of the state ombudsman. The state council
400 shall meet at least quarterly but may meet more frequently as
401 needed.

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

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

409 ~~(g)(f)~~ Members may not ~~shall~~ receive ~~no~~ compensation but
 410 shall, with approval from the state ombudsman, be reimbursed for
 411 per diem and travel expenses as provided in s. 112.061.

412 Section 6. Section 400.0069, Florida Statutes, is amended
 413 to read:

414 400.0069 ~~Local~~ Long-term care ombudsman districts
 415 ~~councils~~; duties; appointment ~~membership~~.-

416 (1) (a) The state ombudsman shall designate districts ~~local~~
 417 ~~long-term care ombudsman councils~~ to carry out the duties of the
 418 state ~~Long-Term Care~~ ombudsman program ~~within local communities~~.
 419 Each district ~~local council~~ shall function under the direction
 420 of the state ombudsman.

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

430 (c) Each district must convene a public meeting every
 431 quarter.

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

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

437 (b) Discover, investigate, and determine the existence of
 438 abuse, or neglect, or exploitation using in any long-term care
 439 facility and to use the procedures provided for in ss. 415.101-
 440 415.113 when applicable.

441 (c) Identify ~~Elicit, receive,~~ investigate, ~~respond to,~~ and
 442 resolve complaints made by or on behalf of residents relating to
 443 actions or omissions by providers or representatives of
 444 providers of long-term care services, other public agencies,
 445 guardians, or representative payees which may adversely affect
 446 the health, safety, welfare, or rights of residents.

447 (d) Review and, if necessary, comment on all existing or
 448 proposed rules, regulations, and other governmental policies and
 449 actions relating to long-term care facilities that may
 450 potentially have an effect on the ~~rights,~~ health, safety,
 451 welfare, and rights ~~welfare~~ of residents.

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

456 (f) Recommend that the state ombudsman and the legal
 457 advocate seek administrative, legal, and other remedies to
 458 protect the health, safety, welfare, and rights of ~~the~~
 459 residents.

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

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

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

470 (4) Each district ~~local council~~ shall be composed of
471 ombudsmen ~~members~~ whose primary residences are ~~residence is~~
472 located within the boundaries of the district ~~local council's~~
473 jurisdiction.

474 (a) Upon good cause shown, the state ombudsman may appoint
475 an ombudsman to another district. ~~The ombudsman shall strive to~~
476 ~~ensure that each local council include the following persons as~~
477 ~~members:~~

478 ~~1. At least one medical or osteopathic physician whose~~
479 ~~practice includes or has included a substantial number of~~
480 ~~geriatric patients and who may practice in a long-term care~~
481 ~~facility;~~

482 ~~2. At least one registered nurse who has geriatric~~
483 ~~experience;~~

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

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

486 ~~5. At least six nursing home residents or representative~~
 487 ~~consumer advocates for nursing home residents;~~

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

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

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

493 (b) The following individuals may not be appointed as
 494 ombudsmen:

495 1. The owner or representative of a long-term care
 496 facility.

497 2. A provider or representative of a provider of long-term
 498 care service.

499 3. An employee of the agency.

500 4. An employee of the department, except for a
 501 representative of the office.

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

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

504 ~~In no case shall the medical director of a long-term care~~
 505 ~~facility or an employee of the agency, the department, the~~
 506 ~~Department of Children and Family Services, or the Agency for~~
 507 ~~Persons with Disabilities serve as a member or as an ex officio~~
 508 ~~member of a council.~~

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

511 1. Individuals wishing to join a local council shall
512 submit an application to the state ombudsman or his or her
513 designee.

514 2. Successfully complete level 2 background screening
515 pursuant to s. 430.0402 and chapter 435 ~~The ombudsman shall~~
516 ~~review the individual's application and advise the secretary of~~
517 ~~his or her recommendation for approval or disapproval of the~~
518 ~~candidate's membership on the local council. If the secretary~~
519 ~~approves of the individual's membership, the individual shall be~~
520 ~~appointed as a member of the local council.~~

521 (b) The state ombudsman shall approve or deny the
522 appointment of the individual as an ombudsman ~~The secretary may~~
523 ~~rescind the ombudsman's approval of a member on a local council~~
524 ~~at any time. If the secretary rescinds the approval of a member~~
525 ~~on a local council, the ombudsman shall ensure that the~~
526 ~~individual is immediately removed from the local council on~~
527 ~~which he or she serves and the individual may no longer~~
528 ~~represent the State Long Term Care Ombudsman Program until the~~
529 ~~secretary provides his or her approval.~~

530 (c) Upon appointment as an ombudsman, the individual may
531 participate in district activities but may not represent the
532 office or conduct any authorized program duties until the
533 individual has completed the initial training specified in s.
534 400.0091(1) and has been certified by the state ombudsman.

535 (d) The state ombudsman, for good cause shown, such as
536 development of a conflict of interest, failure to adhere to the

537 policies and procedures established by the office, or
538 demonstrated inability to carry out the responsibilities of the
539 office, may rescind the appointment of an individual as an
540 ombudsman. After the appointment is rescinded, the individual
541 may not conduct any duties as an ombudsman and may not represent
542 the office or the state ombudsman program ~~A local council may~~
543 ~~recommend the removal of one or more of its members by~~
544 ~~submitting to the ombudsman a resolution adopted by a two-thirds~~
545 ~~vote of the members of the council stating the name of the~~
546 ~~member or members recommended for removal and the reasons for~~
547 ~~the recommendation. If such a recommendation is adopted by a~~
548 ~~local council, the local council chair or district coordinator~~
549 ~~shall immediately report the council's recommendation to the~~
550 ~~ombudsman. The ombudsman shall review the recommendation of the~~
551 ~~local council and advise the secretary of his or her~~
552 ~~recommendation regarding removal of the council member or~~
553 ~~members.~~

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

557 ~~(b) The chair shall select a vice chair from among the~~
558 ~~members of the council. The vice chair shall preside over the~~
559 ~~council in the absence of the chair.~~

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

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

565 ~~(d) A chair may be immediately removed from office prior~~
 566 ~~to the expiration of his or her term by a vote of two-thirds of~~
 567 ~~the members of the local council. If any chair is removed from~~
 568 ~~office prior to the expiration of his or her term, a replacement~~
 569 ~~chair shall be elected during the same meeting, and the term of~~
 570 ~~the replacement chair shall begin immediately. The replacement~~
 571 ~~chair shall serve for the remainder of the term of the person he~~
 572 ~~or she replaced.~~

573 ~~(7) Each local council shall meet upon the call of its~~
 574 ~~chair or upon the call of the ombudsman. Each local council~~
 575 ~~shall meet at least once a month but may meet more frequently if~~
 576 ~~necessary.~~

577 ~~(6)-(8) An ombudsman may not~~ A member of a local council
 578 ~~shall receive no compensation but shall, with approval from the~~
 579 state ~~ombudsman, be reimbursed for travel expenses both within~~
 580 ~~and outside the jurisdiction of the local council in accordance~~
 581 ~~with the provisions of s. 112.061.~~

582 ~~(7)-(9) A representative of the office may~~ The local
 583 ~~councils are authorized to call upon appropriate~~ state ~~agencies~~
 584 ~~of state government for such professional assistance as may be~~
 585 ~~needed in the discharge of~~ his or her ~~their~~ duties, and such.
 586 ~~All state agencies shall cooperate with the local councils in~~
 587 ~~providing requested information and agency representation at~~
 588 ~~council meetings.~~

589 Section 7. Section 400.0070, Florida Statutes, is amended
 590 to read:

591 400.0070 Conflicts of interest.—

592 (1) A representative of the office may ~~The ombudsman shall~~
 593 not:

594 (a) Have a direct involvement in the licensing or
 595 certification of, or an ownership or investment interest in, a
 596 long-term care facility or a provider of a long-term care
 597 service.

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

600 (c) Receive, or have a right to receive, directly or
 601 indirectly, remuneration, in cash or in kind, under a
 602 compensation agreement with the owner or operator of a long-term
 603 care facility.

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

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

609 (a) Situations that constitute an individual ~~a person~~
 610 having a conflict of interest which ~~that~~ could materially affect
 611 the objectivity or capacity of the individual ~~a person~~ to serve
 612 as a representative ~~on an ombudsman council, or as an employee~~
 613 ~~of the office, while carrying out the purposes of the State~~
 614 ~~Long Term Care Ombudsman Program as specified in this part.~~

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

618 Section 8. Section 400.0071, Florida Statutes, is amended
 619 to read:

620 400.0071 State ~~Long-Term Care~~ ombudsman program complaint
 621 procedures.—The department, in consultation with the state
 622 ombudsman, shall adopt rules implementing state and local
 623 complaint procedures. The rules must include procedures for
 624 receiving, investigating, identifying, and resolving complaints
 625 concerning the health, safety, welfare, and rights of residents+.

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

628 ~~(2) Conducting investigations of a long-term care facility~~
 629 ~~or an employee of a long-term care facility subsequent to~~
 630 ~~receiving a complaint.~~

631 ~~(3) Conducting onsite administrative assessments of long-~~
 632 ~~term care facilities.~~

633 Section 9. Section 400.0073, Florida Statutes, is amended
 634 to read:

635 400.0073 Complaint State and local ombudsman council
 636 investigations.—

637 (1) A representative of the office ~~local council~~ shall
 638 identify and investigate, ~~within a reasonable time after a~~
 639 ~~complaint is made,~~ any complaint made by or on behalf of a
 640 ~~resident, a representative of a resident, or any other credible~~

641 ~~source based on an action or omission by an administrator, an~~
 642 ~~employee, or a representative of a long term care facility~~ which
 643 might be:

- 644 (a) Contrary to law;
- 645 (b) Unreasonable, unfair, oppressive, or unnecessarily
 646 discriminatory, even though in accordance with law;
- 647 (c) Based on a mistake of fact;
- 648 (d) Based on improper or irrelevant grounds;
- 649 (e) Unaccompanied by an adequate statement of reasons;
- 650 (f) Performed in an inefficient manner; or
- 651 (g) Otherwise adversely affecting the health, safety,
 652 welfare, or rights of a resident.

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

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

658 (2)(4) If a representative of the office ~~the ombudsman or~~
 659 ~~any state or local council member~~ is not allowed to enter a
 660 long-term care facility, the administrator of the facility shall
 661 be considered to have interfered with a representative of the
 662 office, ~~the state council, or the local council~~ in the
 663 performance of official duties as described in s. 400.0083(1)
 664 and to have violated ~~committed a violation of~~ this part. The
 665 representative of the office ~~ombudsman~~ shall report a facility's
 666 refusal to allow entry to the facility to the state ombudsman or

667 his or her designee, who shall report the incident to the
668 agency, and the agency shall record the report and take it into
669 consideration when determining actions allowable under s.
670 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
671 429.71.

672 Section 10. Section 400.0074, Florida Statutes, is amended
673 to read:

674 400.0074 ~~Local ombudsman council~~ Onsite administrative
675 assessments.-

676 (1) A representative of the office ~~In addition to any~~
677 ~~specific investigation conducted pursuant to a complaint, the~~
678 ~~local council~~ shall conduct, at least annually, an onsite
679 administrative assessment of each nursing home, assisted living
680 facility, and adult family-care home ~~within its jurisdiction.~~
681 This administrative assessment must be resident-centered and
682 must ~~shall~~ focus on factors affecting the rights, health,
683 safety, and welfare of the residents. ~~Each local council is~~
684 ~~encouraged to conduct a similar onsite administrative assessment~~
685 ~~of each additional long-term care facility within its~~
686 ~~jurisdiction.~~

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

689 (a) To the extent possible and reasonable, the
690 administrative assessment may ~~assessments shall~~ not duplicate
691 the efforts of ~~the agency~~ surveys and inspections conducted by

692 ~~state agencies of long-term care facilities under part II of~~
 693 ~~this chapter and parts I and II of chapter 429.~~

694 (b) An administrative assessment shall be conducted at a
 695 time and for a duration necessary to produce the information
 696 required to complete the assessment ~~carry out the duties of the~~
 697 ~~local council.~~

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

701 (d) A representative of the office ~~local council member~~
 702 ~~physically~~ present for the administrative assessment must ~~shall~~
 703 identify himself or herself to the administrator ~~and cite the~~
 704 ~~specific statutory authority for his or her assessment of the~~
 705 ~~facility~~ or his or her designee.

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

708 (f) A representative of the office ~~local council member~~
 709 may not enter a single-family residential unit within a long-
 710 term care facility during an administrative assessment without
 711 the permission of the resident or the representative of the
 712 resident.

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

716 (3) ~~Regardless of jurisdiction, the ombudsman may~~
 717 ~~authorize a state or local council member to assist another~~

718 ~~local council to perform the administrative assessments~~
 719 ~~described in this section.~~

720 ~~(4)~~ An onsite administrative assessment may not be
 721 accomplished by forcible entry. However, if a representative of
 722 the office ombudsman ~~or a state or local council member~~ is not
 723 allowed to enter a long-term care facility, the administrator of
 724 the facility shall be considered to have interfered with a
 725 representative of the office, ~~the state council, or the local~~
 726 ~~council~~ in the performance of official duties as described in s.
 727 400.0083(1) and to have committed a violation of this part. The
 728 representative of the office ombudsman shall report the refusal
 729 by a facility to allow entry to the state ombudsman or his or
 730 her designee, who shall then report the incident to the agency,
 731 and the agency shall record the report and take it into
 732 consideration when determining actions allowable under s.
 733 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
 734 429.71.

735 (4) The department, in consultation with the state
 736 ombudsman, may adopt rules implementing procedures for
 737 conducting onsite administrative assessments of long-term care
 738 facilities.

739 Section 11. Section 400.0075, Florida Statutes, is amended
 740 to read:

741 400.0075 Complaint notification and resolution
 742 procedures.-

743 (1) (a) Any complaint ~~or problem~~ verified by a
744 representative of the office ~~an ombudsman council~~ as a result of
745 an investigation may ~~or onsite administrative assessment,~~ which
746 ~~complaint or problem is determined to require remedial action by~~
747 ~~the local council,~~ shall be identified and brought to the
748 attention of the long-term care facility administrator subject
749 to the confidentiality provisions of s. 400.0077 ~~in writing.~~
750 Upon receipt of the information ~~such document,~~ the
751 administrator, with the concurrence of the representative of the
752 office ~~local council chair,~~ shall establish target dates for
753 taking appropriate remedial action. If, by the target date, the
754 remedial action is not completed or forthcoming, the
755 representative may extend the target date if there is reason to
756 believe such action would facilitate the resolution of the
757 complaint, or the representative may refer the complaint to the
758 district manager ~~local council chair may,~~ after obtaining
759 ~~approval from the ombudsman and a majority of the members of the~~
760 ~~local council:~~

761 1. ~~Extend the target date if the chair has reason to~~
762 ~~believe such action would facilitate the resolution of the~~
763 ~~complaint.~~

764 2. ~~In accordance with s. 400.0077, publicize the~~
765 ~~complaint, the recommendations of the council, and the response~~
766 ~~of the long-term care facility.~~

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

768 (b) If an ombudsman determines ~~the local council chair~~
 769 ~~believes~~ that the health, safety, welfare, or rights of a the
 770 resident are in imminent danger, the ombudsman must immediately
 771 notify the district manager. ~~The district manager chair shall~~
 772 ~~notify the ombudsman or legal advocate, who,~~ after verifying
 773 that such imminent danger exists, must notify the appropriate
 774 state agencies, including law enforcement agencies, the state
 775 ombudsman, and the legal advocate, to ensure the protection of
 776 ~~shall seek immediate legal or administrative remedies to protect~~
 777 the resident.

778 (c) If the state ombudsman or legal advocate has reason to
 779 believe that the long-term care facility or an employee of the
 780 facility has committed a criminal act, the state ombudsman or
 781 legal advocate shall provide the local law enforcement agency
 782 with the relevant information to initiate an investigation of
 783 the case.

784 (2) ~~(a)~~ Upon referral from a district ~~local council,~~ the
 785 state ombudsman or his or her designee ~~council~~ shall assume the
 786 responsibility for the disposition of the complaint. If a long-
 787 term care facility fails to take action to resolve or remedy the
 788 ~~on a complaint by the state council,~~ the state ombudsman ~~council~~
 789 ~~may, after obtaining approval from the ombudsman and a majority~~
 790 ~~of the state council members:~~

791 (a)1. In accordance with s. 400.0077, publicize the
 792 complaint, the recommendations of the representatives of the

793 office local or state council, and the response of the long-term
794 care facility.

795 (b)2- Recommend to the department and the agency a series
796 of facility reviews pursuant to s. 400.19, s. 429.34, or s.
797 429.67 to ensure correction and nonrecurrence of the conditions
798 that gave ~~give~~ rise to the complaint ~~complaints~~ against the a
799 long-term care facility.

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

803 (d)4- Recommend to the department and the agency that
804 procedures be initiated for action against ~~revocation of~~ the
805 long-term care facility's license in accordance with chapter
806 120.

807 ~~(b) If the state council chair believes that the health,~~
808 ~~safety, welfare, or rights of the resident are in imminent~~
809 ~~danger, the chair shall notify the ombudsman or legal advocate,~~
810 ~~who, after verifying that such imminent danger exists, shall~~
811 ~~seek immediate legal or administrative remedies to protect the~~
812 ~~resident.~~

813 (3)(e) If the state ombudsman, after consultation with the
814 legal advocate, has reason to believe that the long-term care
815 facility or an employee of the facility has committed a criminal
816 act, the office ombudsman shall provide the local law
817 enforcement agency with the relevant information to initiate an
818 investigation of the case.

819 Section 12. Section 400.0078, Florida Statutes, is amended
 820 to read:

821 400.0078 Citizen access to state ~~Long-Term-Care~~ ombudsman
 822 program services.-

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

827 (2) ~~Every resident or representative of a resident shall~~
 828 ~~receive,~~ Upon admission to a long-term care facility, each
 829 resident or representative of a resident must receive
 830 information regarding:

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

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

835 (c) Information that retaliatory action cannot be taken
 836 against a resident for presenting grievances or for exercising
 837 any other resident rights.

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

840
 841 Residents or their representatives must be furnished additional
 842 copies of this information upon request.

843 Section 13. Section 400.0079, Florida Statutes, is amended
 844 to read:

845 400.0079 Immunity.—

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

850 (2) Representatives of the office and ~~The ombudsman or any~~
 851 ~~person authorized by the ombudsman to act on behalf of the~~
 852 ~~office, as well as all members of the state council are and~~
 853 ~~local councils, shall be~~ immune from any liability, civil or
 854 criminal, that otherwise might be incurred or imposed during the
 855 good faith performance of official duties.

856 Section 14. Section 400.0081, Florida Statutes, is amended
 857 to read:

858 400.0081 Access to facilities, residents, and records.—

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

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

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

868 1. The representative of the office has the permission of
 869 the resident or the legal representative of the resident; or

870 2. The resident is unable to consent to the review and
 871 does not have a ~~has no~~ legal representative.

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

874 1. A legal representative or guardian of the resident
 875 refuses to give permission;

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

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

881 (d) Access to the administrative records, policies, and
 882 documents to which residents or the general public has ~~have~~
 883 access.

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

887 (2) The department, in consultation with the state
 888 ombudsman ~~and the state council~~, may adopt rules to establish
 889 procedures to ensure access to facilities, residents, and
 890 records as described in this section.

891 Section 15. Section 400.0083, Florida Statutes, is amended
 892 to read:

893 400.0083 Interference; retaliation; penalties.—

894 (1) A ~~It shall be unlawful for any~~ person, long-term care
 895 facility, or other entity may not ~~to~~ willfully interfere with a

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

898 (2) A ~~It shall be unlawful for any person, long-term care~~
 899 ~~facility, or other entity~~ may not ~~to~~ knowingly or willfully take
 900 action or retaliate against any resident, employee, or other
 901 person for filing a complaint with, providing information to, or
 902 otherwise cooperating with any representative of the office or,
 903 the state council, ~~or a local council~~.

904 (3) A ~~Any~~ person, long-term care facility, or other entity
 905 that violates this section:

906 (a) Is ~~Shall be~~ liable for damages and equitable relief as
 907 determined by law.

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

910 Section 16. Section 400.0087, Florida Statutes, is amended
 911 to read:

912 400.0087 Department oversight; funding.—

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

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

920 (b) The department may divert from the federal ombudsman
 921 appropriation an amount equal to the department's administrative

922 cost ratio to cover the costs associated with administering the
 923 state ombudsman program. The remaining allotment from the Older
 924 Americans Act program shall be expended on direct ombudsman
 925 activities.

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

929 (3) The department is responsible for ensuring that the
 930 office:

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

933 (b) Provides information to public and private agencies,
 934 legislators, and others.

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

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

941 (4) The department shall also:

942 (a) Receive and disburse state and federal funds for
 943 purposes that the state ombudsman has formulated in accordance
 944 with the Older Americans Act.

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

CS/HB 91

2014

948 Section 17. Section 400.0089, Florida Statutes, is amended
 949 to read:

950 400.0089 Complaint data reports.—The office shall maintain
 951 a statewide uniform reporting system to collect and analyze data
 952 relating to complaints and conditions in long-term care
 953 facilities and to residents for the purpose of identifying and
 954 resolving complaints ~~significant problems~~. The office shall
 955 publish quarterly and make readily available information
 956 pertaining to the number and types of complaints received by the
 957 state ~~Long-Term-Care~~ ombudsman program and shall include such
 958 information in the annual report required under s. 400.0065.

959 Section 18. Section 400.0091, Florida Statutes, is amended
 960 to read:

961 400.0091 Training.—The state ombudsman shall ensure that
 962 appropriate training is provided to all representatives
 963 ~~employees of the office and to the members of the state and~~
 964 ~~local councils~~.

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

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

974 (a) Resident confidentiality.
 975 (b) Guardianships and powers of attorney.
 976 (c) Medication administration.
 977 (d) Care and medication of residents with dementia and
 978 Alzheimer's disease.
 979 (e) Accounting for residents' funds.
 980 (f) Discharge rights and responsibilities.
 981 (g) Cultural sensitivity.
 982 (h) Any other topic related to residency within a long-
 983 term care facility recommended by the secretary.
 984 (3) An individual ~~No employee, officer, or representative~~
 985 ~~of the office or of the state or local councils,~~ other than the
 986 state ombudsman, may not hold himself or herself out as a
 987 representative of the office ~~State Long-Term Care Ombudsman~~
 988 ~~Program~~ or conduct any authorized program duty described in this
 989 part unless the individual ~~person~~ has received the training
 990 required by this section and has been certified by the state
 991 ombudsman as qualified to carry out ombudsman activities on
 992 behalf of the office ~~or the state or local councils.~~
 993 Section 19. Subsection (4) of section 20.41, Florida
 994 Statutes, is amended to read:
 995 20.41 Department of Elderly Affairs.—There is created a
 996 Department of Elderly Affairs.
 997 (4) The department shall administer the Office of State
 998 Long-Term Care Ombudsman Council, created by s. 400.0063
 999 ~~400.0067, and the local long-term care ombudsman councils,~~

1000 ~~created by s. 400.0069~~ and shall, as required by s. 712 of the
 1001 federal Older Americans Act of 1965, ensure that ~~both~~ the state
 1002 office operates and ~~local long-term care ombudsman councils~~
 1003 ~~operate~~ in compliance with the Older Americans Act.

1004 Section 20. Subsections (11) through (13) of section
 1005 400.021, Florida Statutes, are renumbered as subsections (10)
 1006 through (12), respectively, subsections (15) through (19) are
 1007 renumbered as subsections (16) through (20), respectively,
 1008 present subsections (10) and (18) are amended, and new
 1009 subsections (13) and (15) are added to that section, to read:

1010 400.021 Definitions.—When used in this part, unless the
 1011 context otherwise requires, the term:

1012 ~~(10) "Local ombudsman council" means a local long-term~~
 1013 ~~care ombudsman council established pursuant to s. 400.0069,~~
 1014 ~~located within the Older Americans Act planning and service~~
 1015 ~~areas.~~

1016 (13) "Office" has the same meaning as provided in s.
 1017 400.0060.

1018 (15) "Representative of the office" has the same meaning
 1019 as provided in s. 400.0060.

1020 (19)~~(18)~~ "State ombudsman program council" has the same
 1021 meaning as provided in s. 400.0060 ~~means the State Long-Term~~
 1022 ~~Care Ombudsman Council established pursuant to s. 400.0067.~~

1023 Section 21. Paragraph (c) of subsection (1) and
 1024 subsections (2) and (3) of section 400.022, Florida Statutes,
 1025 are amended to read:

1026 400.022 Residents' rights.—

1027 (1) All licensees of nursing home facilities shall adopt
 1028 and make public a statement of the rights and responsibilities
 1029 of the residents of such facilities and shall treat such
 1030 residents in accordance with the provisions of that statement.
 1031 The statement shall assure each resident the following:

1032 (c) Any entity or individual that provides health, social,
 1033 legal, or other services to a resident has the right to have
 1034 reasonable access to the resident. The resident has the right to
 1035 deny or withdraw consent to access at any time by any entity or
 1036 individual. Notwithstanding the visiting policy of the facility,
 1037 the following individuals must be permitted immediate access to
 1038 the resident:

1039 1. Any representative of the federal or state government,
 1040 including, but not limited to, representatives of the Department
 1041 of Children and Families ~~Family Services~~, the Department of
 1042 Health, the Agency for Health Care Administration, the Office of
 1043 the Attorney General, and the Department of Elderly Affairs; any
 1044 law enforcement officer; any representative ~~members~~ of the
 1045 office ~~state or local ombudsman council~~; and the resident's
 1046 individual physician.

1047 2. Subject to the resident's right to deny or withdraw
 1048 consent, immediate family or other relatives of the resident.

1049
 1050 The facility must allow representatives of the office ~~state~~
 1051 ~~Long Term Care ombudsman Council~~ to examine a resident's

1052 clinical records with the permission of the resident or the
 1053 resident's legal representative and consistent with state law.

1054 (2) The licensee for each nursing home shall orally inform
 1055 the resident of the resident's rights and provide a copy of the
 1056 statement required by subsection (1) to each resident or the
 1057 resident's legal representative at or before the resident's
 1058 admission to a facility. The licensee shall provide a copy of
 1059 the resident's rights to each staff member of the facility. Each
 1060 such licensee shall prepare a written plan and provide
 1061 appropriate staff training to implement ~~the provisions of~~ this
 1062 section. The written statement of rights must include a
 1063 statement that a resident may file a complaint with the agency
 1064 or state local ombudsman program council. The statement must be
 1065 in boldfaced type and ~~shall~~ include the ~~name, address, and~~
 1066 telephone number and e-mail address of the state numbers of the
 1067 ~~local~~ ombudsman program council and the telephone number of the
 1068 central abuse hotline where complaints may be lodged.

1069 (3) Any violation of the resident's rights set forth in
 1070 this section constitutes ~~shall constitute~~ grounds for action by
 1071 the agency under ~~the provisions of~~ s. 400.102, s. 400.121, or
 1072 part II of chapter 408. In order to determine whether the
 1073 licensee is adequately protecting residents' rights, the
 1074 licensure inspection of the facility must ~~shall~~ include private
 1075 informal conversations with a sample of residents to discuss
 1076 residents' experiences within the facility with respect to
 1077 rights specified in this section and general compliance with

1078 standards, and consultation with the state ombudsman program
 1079 ~~council in the local planning and service area of the Department~~
 1080 ~~of Elderly Affairs in which the nursing home is located.~~

1081 Section 22. Subsections (8), (9), and (11) through (14) of
 1082 section 400.0255, Florida Statutes, are amended to read:

1083 400.0255 Resident transfer or discharge; requirements and
 1084 procedures; hearings.—

1085 (8) The notice required by subsection (7) must be in
 1086 writing and must contain all information required by state and
 1087 federal law, rules, or regulations applicable to Medicaid or
 1088 Medicare cases. The agency shall develop a standard document to
 1089 be used by all facilities licensed under this part for purposes
 1090 of notifying residents of a discharge or transfer. Such document
 1091 must include a means for a resident to request the office ~~local~~
 1092 ~~long-term care ombudsman council~~ to review the notice and
 1093 request information about or assistance with initiating a fair
 1094 hearing with the department's Office of Appeals Hearings. In
 1095 addition to any other pertinent information included, the form
 1096 shall specify the reason allowed under federal or state law that
 1097 the resident is being discharged or transferred, with an
 1098 explanation to support this action. Further, the form must ~~shall~~
 1099 state the effective date of the discharge or transfer and the
 1100 location to which the resident is being discharged or
 1101 transferred. The form must ~~shall~~ clearly describe the resident's
 1102 appeal rights and the procedures for filing an appeal, including
 1103 the right to request the office ~~local ombudsman council~~ to

1104 review the notice of discharge or transfer. A copy of the notice
1105 must be placed in the resident's clinical record, and a copy
1106 must be transmitted to the resident's legal guardian or
1107 representative and to the office ~~local ombudsman council~~ within
1108 5 business days after signature by the resident or resident
1109 designee.

1110 (9) A resident may request that the office ~~local ombudsman~~
1111 ~~council~~ review any notice of discharge or transfer given to the
1112 resident. When requested by a resident to review a notice of
1113 discharge or transfer, the office ~~local ombudsman council~~ shall
1114 do so within 7 days after receipt of the request. The nursing
1115 home administrator, or the administrator's designee, must
1116 forward the request for review contained in the notice to the
1117 office ~~local ombudsman council~~ within 24 hours after such
1118 request is submitted. Failure to forward the request within 24
1119 hours after the request is submitted shall toll the running of
1120 the 30-day advance notice period until the request has been
1121 forwarded.

1122 (11) Notwithstanding paragraph (10) (b), an emergency
1123 discharge or transfer may be implemented as necessary pursuant
1124 to state or federal law during the ~~period of~~ time after the
1125 notice is given and before the time a hearing decision is
1126 rendered. Notice of an emergency discharge or transfer to the
1127 resident, the resident's legal guardian or representative, and
1128 the office ~~local ombudsman council~~ if requested pursuant to
1129 subsection (9) must be by telephone or in person. This notice

1130 shall be given before the transfer, if possible, or as soon
 1131 thereafter as practicable. A representative of the office local
 1132 ~~ombudsman council~~ conducting a review under this subsection
 1133 shall do so within 24 hours after receipt of the request. The
 1134 resident's file must be documented to show who was contacted,
 1135 whether the contact was by telephone or in person, and the date
 1136 and time of the contact. If the notice is not given in writing,
 1137 written notice meeting the requirements of subsection (8) must
 1138 be given the next working day.

1139 (12) After receipt of any notice required under this
 1140 section, the office local ~~ombudsman council~~ may request a
 1141 private informal conversation with a resident to whom the notice
 1142 is directed, and, if known, a family member or the resident's
 1143 legal guardian or designee, to ensure that the facility is
 1144 proceeding with the discharge or transfer in accordance with ~~the~~
 1145 ~~requirements of~~ this section. If requested, the office local
 1146 ~~ombudsman council~~ shall assist the resident with filing an
 1147 appeal of the proposed discharge or transfer.

1148 (13) The following persons must be present at all hearings
 1149 authorized under this section:

1150 (a) The resident, or the resident's legal representative
 1151 or designee.

1152 (b) The facility administrator, or the facility's legal
 1153 representative or designee.

1154

1155 A representative of the office ~~local long-term care ombudsman~~
 1156 ~~council~~ may be present at all hearings authorized by this
 1157 section.

1158 (14) In any hearing under this section, the following
 1159 information concerning the parties shall be confidential and
 1160 exempt from ~~the provisions of~~ s. 119.07(1):

- 1161 (a) Names and addresses.
- 1162 (b) Medical services provided.
- 1163 (c) Social and economic conditions or circumstances.
- 1164 (d) Evaluation of personal information.
- 1165 (e) Medical data, including diagnosis and past history of
 1166 disease or disability.

1167 (f) Any information received verifying income eligibility
 1168 and amount of medical assistance payments. Income information
 1169 received from the Social Security Administration or the Internal
 1170 Revenue Service must be safeguarded according to the
 1171 requirements of the agency that furnished the data.

1172
 1173 The exemption created by this subsection does not prohibit
 1174 access to such information by a representative of the office
 1175 ~~local long-term care ombudsman council~~ upon request, by a
 1176 reviewing court if such information is required to be part of
 1177 the record upon subsequent review, or as specified in s. 24(a),
 1178 Art. I of the State Constitution.

1179 Section 23. Subsection (2) of section 400.1413, Florida
 1180 Statutes, is amended to read:

1181 400.1413 Volunteers in nursing homes.—

1182 (2) This section does not affect the activities of the
 1183 ~~state or local long-term care~~ ombudsman program ~~councils~~
 1184 authorized under part I.

1185 Section 24. Paragraph (d) of subsection (5) of section
 1186 400.162, Florida Statutes, is amended to read:

1187 400.162 Property and personal affairs of residents.—

1188 (5)

1189 (d) If, at any time during the period for which a license
 1190 is issued, a licensee that has not purchased a surety bond or
 1191 entered into a self-insurance agreement, as provided in
 1192 paragraphs (b) and (c), is requested to provide safekeeping for
 1193 the personal funds of a resident, the licensee shall notify the
 1194 agency of the request and make application for a surety bond or
 1195 for participation in a self-insurance agreement within 7 days
 1196 after ~~of~~ the request, exclusive of weekends and holidays. Copies
 1197 of the application, along with written documentation of related
 1198 correspondence with an insurance agency or group, shall be
 1199 maintained by the licensee for review by the agency and the
 1200 office ~~state Nursing Home and Long-Term Care Facility ombudsman~~
 1201 ~~Council~~.

1202 Section 25. Subsections (1) and (4) of section 400.19,
 1203 Florida Statutes, are amended to read:

1204 400.19 Right of entry and inspection.—

1205 (1) In accordance with part II of chapter 408, the agency
 1206 and any duly designated officer or employee thereof or a

1207 representative member of the office ~~state Long-Term Care~~
 1208 ~~ombudsman Council or the local long-term care ombudsman council~~
 1209 shall have the right to enter upon and into the premises of any
 1210 facility licensed pursuant to this part, or any distinct nursing
 1211 home unit of a hospital licensed under chapter 395 or any
 1212 freestanding facility licensed under chapter 395 which ~~that~~
 1213 provides extended care or other long-term care services, at any
 1214 reasonable time in order to determine the state of compliance
 1215 with ~~the provisions of~~ this part, part II of chapter 408, and
 1216 applicable rules in force pursuant thereto. The agency shall,
 1217 within 60 days after receipt of a complaint made by a resident
 1218 or resident's representative, complete its investigation and
 1219 provide to the complainant its findings and resolution.

1220 (4) The agency shall conduct unannounced onsite facility
 1221 reviews following written verification of licensee noncompliance
 1222 in instances in which the office ~~a long-term care ombudsman~~
 1223 ~~council~~, pursuant to ss. 400.0071 and 400.0075, has received a
 1224 complaint and has documented deficiencies in resident care or in
 1225 the physical plant of the facility that threaten the health,
 1226 safety, or security of residents, or when the agency documents
 1227 through inspection that conditions in a facility present a
 1228 direct or indirect threat to the health, safety, or security of
 1229 residents. However, the agency shall conduct unannounced onsite
 1230 reviews every 3 months of each facility while the facility has a
 1231 conditional license. Deficiencies related to physical plant do
 1232 not require followup reviews after the agency has determined

1233 that correction of the deficiency has been accomplished and that
 1234 the correction is of the nature that continued compliance can be
 1235 reasonably expected.

1236 Section 26. Subsection (1) of section 400.191, Florida
 1237 Statutes, is amended to read:

1238 400.191 Availability, distribution, and posting of reports
 1239 and records.—

1240 (1) The agency shall provide information to the public
 1241 about all of the licensed nursing home facilities operating in
 1242 the state. The agency shall, within 60 days after a licensure
 1243 inspection visit or within 30 days after any interim visit to a
 1244 facility, send copies of the inspection reports to the office
 1245 ~~local long-term care ombudsman council~~, the agency's local
 1246 office, and a public library or the county seat for the county
 1247 in which the facility is located. The agency may provide
 1248 electronic access to inspection reports as a substitute for
 1249 sending copies.

1250 Section 27. Subsection (6) and paragraph (c) of subsection
 1251 (7) of section 400.23, Florida Statutes, are amended to read:

1252 400.23 Rules; evaluation and deficiencies; licensure
 1253 status.—

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

1259 preclude the office ~~local long-term care ombudsman council~~ from
1260 requesting the agency to conduct a followup visit to the
1261 facility.

1262 (7) The agency shall, at least every 15 months, evaluate
1263 all nursing home facilities and make a determination as to the
1264 degree of compliance by each licensee with the established rules
1265 adopted under this part as a basis for assigning a licensure
1266 status to that facility. The agency shall base its evaluation on
1267 the most recent inspection report, taking into consideration
1268 findings from other official reports, surveys, interviews,
1269 investigations, and inspections. In addition to license
1270 categories authorized under part II of chapter 408, the agency
1271 shall assign a licensure status of standard or conditional to
1272 each nursing home.

1273 (c) In evaluating the overall quality of care and services
1274 and determining whether the facility will receive a conditional
1275 or standard license, the agency shall consider the needs and
1276 limitations of residents in the facility and the results of
1277 interviews and surveys of a representative sampling of
1278 residents, families of residents, representatives of the office
1279 ~~ombudsman council members in the planning and service area in~~
1280 ~~which the facility is located~~, guardians of residents, and staff
1281 of the nursing home facility.

1282 Section 28. Paragraph (a) of subsection (3), paragraph (f)
1283 of subsection (5), and subsection (6) of section 400.235,
1284 Florida Statutes, are amended to read:

1285 400.235 Nursing home quality and licensure status; Gold
 1286 Seal Program.—

1287 (3) (a) The Gold Seal Program shall be developed and
 1288 implemented by the Governor's Panel on Excellence in Long-Term
 1289 Care which shall operate under the authority of the Executive
 1290 Office of the Governor. The panel shall be composed of three
 1291 persons appointed by the Governor, to include a consumer
 1292 advocate for senior citizens and two persons with expertise in
 1293 the fields of quality management, service delivery excellence,
 1294 or public sector accountability; three persons appointed by the
 1295 Secretary of Elderly Affairs, to include an active member of a
 1296 nursing facility family and resident care council and a member
 1297 of the University Consortium on Aging; a representative of the
 1298 Office of State Long-Term Care Ombudsman; one person appointed
 1299 by the Florida Life Care Residents Association; one person
 1300 appointed by the State Surgeon General; two persons appointed by
 1301 the Secretary of Health Care Administration; one person
 1302 appointed by the Florida Association of Homes for the Aging; and
 1303 one person appointed by the Florida Health Care Association.
 1304 Vacancies on the panel shall be filled in the same manner as the
 1305 original appointments.

1306 (5) Facilities must meet the following additional criteria
 1307 for recognition as a Gold Seal Program facility:

1308 (f) Evidence that verified ~~an outstanding record regarding~~
 1309 ~~the number and types of substantiated~~ complaints reported to the
 1310 Office of State Long-Term Care Ombudsman ~~Council~~ within the 30

1311 months preceding application for the program have been resolved
 1312 or, if not resolved, the facility has made a good faith effort
 1313 to resolve the complaints.

1314
 1315 A facility assigned a conditional licensure status may not
 1316 qualify for consideration for the Gold Seal Program until after
 1317 it has operated for 30 months with no class I or class II
 1318 deficiencies and has completed a regularly scheduled relicensure
 1319 survey.

1320 (6) The agency, nursing facility industry organizations,
 1321 consumers, Office of State Long-Term Care Ombudsman Council, and
 1322 members of the community may recommend to the Governor
 1323 facilities that meet the established criteria for consideration
 1324 for and award of the Gold Seal. The panel shall review nominees
 1325 and make a recommendation to the Governor for final approval and
 1326 award. The decision of the Governor is final and is not subject
 1327 to appeal.

1328 Section 29. Subsections (18) through (28) of section
 1329 415.102, Florida Statutes, are renumbered as subsections (19)
 1330 through (29), respectively, and a new subsection (18) is added
 1331 to that section, to read:

1332 415.102 Definitions of terms used in ss. 415.101-415.113.—
 1333 As used in ss. 415.101-415.113, the term:

1334 (18) "Office" has the same meaning as provided in s.
 1335 400.0060.

1336 Section 30. Paragraph (a) of subsection (1) of section
 1337 415.1034, Florida Statutes, is amended to read:

1338 415.1034 Mandatory reporting of abuse, neglect, or
 1339 exploitation of vulnerable adults; mandatory reports of death.—

1340 (1) MANDATORY REPORTING.—

1341 (a) Any person, including, but not limited to, any:

1342 1. Physician, osteopathic physician, medical examiner,
 1343 chiropractic physician, nurse, paramedic, emergency medical
 1344 technician, or hospital personnel engaged in the admission,
 1345 examination, care, or treatment of vulnerable adults;

1346 2. Health professional or mental health professional other
 1347 than one listed in subparagraph 1.;

1348 3. Practitioner who relies solely on spiritual means for
 1349 healing;

1350 4. Nursing home staff; assisted living facility staff;
 1351 adult day care center staff; adult family-care home staff;
 1352 social worker; or other professional adult care, residential, or
 1353 institutional staff;

1354 5. State, county, or municipal criminal justice employee
 1355 or law enforcement officer;

1356 6. ~~An~~ Employee of the Department of Business and
 1357 Professional Regulation conducting inspections of public lodging
 1358 establishments under s. 509.032;

1359 7. Florida advocacy council member or representative of
 1360 the Office of State Long-Term Care Ombudsman ~~council member~~; or

1361 8. Bank, savings and loan, or credit union officer,
 1362 trustee, or employee,
 1363
 1364 who knows, or has reasonable cause to suspect, that a vulnerable
 1365 adult has been or is being abused, neglected, or exploited shall
 1366 immediately report such knowledge or suspicion to the central
 1367 abuse hotline.

1368 Section 31. Subsection (1) of section 415.104, Florida
 1369 Statutes, is amended to read:

1370 415.104 Protective investigations of cases of abuse,
 1371 neglect, or exploitation of vulnerable adults; transmittal of
 1372 records to state attorney.-

1373 (1) The department shall, upon receipt of a report
 1374 alleging abuse, neglect, or exploitation of a vulnerable adult,
 1375 begin within 24 hours a protective investigation of the facts
 1376 alleged therein. If a caregiver refuses to allow the department
 1377 to begin a protective investigation or interferes with the
 1378 conduct of such an investigation, the appropriate law
 1379 enforcement agency shall be contacted for assistance. If, during
 1380 the course of the investigation, the department has reason to
 1381 believe that the abuse, neglect, or exploitation is perpetrated
 1382 by a second party, the appropriate law enforcement agency and
 1383 state attorney shall be orally notified. The department and the
 1384 law enforcement agency shall cooperate to allow the criminal
 1385 investigation to proceed concurrently with, and not be hindered
 1386 by, the protective investigation. The department shall make a

1387 preliminary written report to the law enforcement agencies
 1388 within 5 working days after the oral report. The department
 1389 shall, within 24 hours after receipt of the report, notify the
 1390 appropriate Florida local advocacy council, or the office long-
 1391 ~~term care ombudsman council~~, when appropriate, that an alleged
 1392 abuse, neglect, or exploitation perpetrated by a second party
 1393 has occurred. Notice to the Florida local advocacy council or
 1394 the office long-term care ombudsman council may be accomplished
 1395 orally or in writing and shall include the name and location of
 1396 the vulnerable adult alleged to have been abused, neglected, or
 1397 exploited and the nature of the report.

1398 Section 32. Subsection (8) of section 415.1055, Florida
 1399 Statutes, is amended to read:

1400 415.1055 Notification to administrative entities.—

1401 (8) At the conclusion of a protective investigation at a
 1402 facility, the department shall notify ~~either~~ the Florida local
 1403 advocacy council or the office long-term care ombudsman council
 1404 of the results of the investigation. This notification must be
 1405 in writing.

1406 Section 33. Subsection (2) of section 415.106, Florida
 1407 Statutes, is amended to read:

1408 415.106 Cooperation by the department and criminal justice
 1409 and other agencies.—

1410 (2) To ensure coordination, communication, and cooperation
 1411 with the investigation of abuse, neglect, or exploitation of
 1412 vulnerable adults, the department shall develop and maintain

1413 interprogram agreements or operational procedures among
 1414 appropriate departmental programs and the Office of State Long-
 1415 ~~Term Care Ombudsman Council~~, the Florida Statewide Advocacy
 1416 Council, and other agencies that provide services to vulnerable
 1417 adults. These agreements or procedures must cover such subjects
 1418 as the appropriate roles and responsibilities of the department
 1419 in identifying and responding to reports of abuse, neglect, or
 1420 exploitation of vulnerable adults; the provision of services;
 1421 and related coordinated activities.

1422 Section 34. Paragraph (g) of subsection (3) of section
 1423 415.107, Florida Statutes, is amended to read:

1424 415.107 Confidentiality of reports and records.—

1425 (3) Access to all records, excluding the name of the
 1426 reporter which shall be released only as provided in subsection
 1427 (6), shall be granted only to the following persons, officials,
 1428 and agencies:

1429 (g) Any appropriate official of the Florida advocacy
 1430 council or the office ~~long-term care ombudsman council~~
 1431 investigating a report of known or suspected abuse, neglect, or
 1432 exploitation of a vulnerable adult.

1433 Section 35. Subsections (16) through (26) of section
 1434 429.02, Florida Statutes, are renumbered as subsections (17)
 1435 through (27), respectively, present subsections (11) and (20)
 1436 are amended, and a new subsection (16) is added to that section,
 1437 to read:

1438 429.02 Definitions.—When used in this part, the term:

1439 (11) "Extended congregate care" means acts beyond those
 1440 authorized in subsection (17) ~~(16)~~ that may be performed
 1441 pursuant to part I of chapter 464 by persons licensed thereunder
 1442 while carrying out their professional duties, and other
 1443 supportive services which may be specified by rule. The purpose
 1444 of such services is to enable residents to age in place in a
 1445 residential environment despite mental or physical limitations
 1446 that might otherwise disqualify them from residency in a
 1447 facility licensed under this part.

1448 (16) "Office" has the same meaning as provided in s.
 1449 400.0060.

1450 (21) ~~(20)~~ "Resident's representative or designee" means a
 1451 person other than the owner, or an agent or employee of the
 1452 facility, designated in writing by the resident, if legally
 1453 competent, to receive notice of changes in the contract executed
 1454 pursuant to s. 429.24; to receive notice of and to participate
 1455 in meetings between the resident and the facility owner,
 1456 administrator, or staff concerning the rights of the resident;
 1457 to assist the resident in contacting the office ombudsman
 1458 ~~council~~ if the resident has a complaint against the facility; or
 1459 to bring legal action on behalf of the resident pursuant to s.
 1460 429.29.

1461 Section 36. Paragraph (b) of subsection (3) of section
 1462 429.07, Florida Statutes, is amended to read:

1463 429.07 License required; fee.-

1464 (3) In addition to the requirements of s. 408.806, each
1465 license granted by the agency must state the type of care for
1466 which the license is granted. Licenses shall be issued for one
1467 or more of the following categories of care: standard, extended
1468 congregate care, limited nursing services, or limited mental
1469 health.

1470 (b) An extended congregate care license shall be issued to
1471 facilities providing, directly or through contract, services
1472 beyond those authorized in paragraph (a), including services
1473 performed by persons licensed under part I of chapter 464 and
1474 supportive services, as defined by rule, to persons who would
1475 otherwise be disqualified from continued residence in a facility
1476 licensed under this part.

1477 1. In order for extended congregate care services to be
1478 provided, the agency must first determine that all requirements
1479 established in law and rule are met and must specifically
1480 designate, on the facility's license, that such services may be
1481 provided and whether the designation applies to all or part of
1482 the facility. Such designation may be made at the time of
1483 initial licensure or relicensure, or upon request in writing by
1484 a licensee under this part and part II of chapter 408. The
1485 notification of approval or the denial of the request shall be
1486 made in accordance with part II of chapter 408. Existing
1487 facilities qualifying to provide extended congregate care
1488 services must have maintained a standard license and may not
1489 have been subject to administrative sanctions during the

1490 previous 2 years, or since initial licensure if the facility has
1491 been licensed for less than 2 years, for any of the following
1492 reasons:

- 1493 a. A class I or class II violation;
- 1494 b. Three or more repeat or recurring class III violations
1495 of identical or similar resident care standards from which a
1496 pattern of noncompliance is found by the agency;
- 1497 c. Three or more class III violations that were not
1498 corrected in accordance with the corrective action plan approved
1499 by the agency;
- 1500 d. Violation of resident care standards which results in
1501 requiring the facility to employ the services of a consultant
1502 pharmacist or consultant dietitian;
- 1503 e. Denial, suspension, or revocation of a license for
1504 another facility licensed under this part in which the applicant
1505 for an extended congregate care license has at least 25 percent
1506 ownership interest; or
- 1507 f. Imposition of a moratorium pursuant to this part or
1508 part II of chapter 408 or initiation of injunctive proceedings.

1509 2. A facility that is licensed to provide extended
1510 congregate care services shall maintain a written progress
1511 report on each person who receives services which describes the
1512 type, amount, duration, scope, and outcome of services that are
1513 rendered and the general status of the resident's health. A
1514 registered nurse, or appropriate designee, representing the
1515 agency shall visit the facility at least quarterly to monitor

1516 residents who are receiving extended congregate care services
 1517 and to determine whether ~~if~~ the facility is in compliance with
 1518 this part, part II of chapter 408, and relevant rules. One of
 1519 the visits may be in conjunction with the regular survey. The
 1520 monitoring visits may be provided through contractual
 1521 arrangements with appropriate community agencies. A registered
 1522 nurse shall serve as part of the team that inspects the
 1523 facility. The agency may waive one of the required yearly
 1524 monitoring visits for a facility that has been licensed for at
 1525 least 24 months to provide extended congregate care services~~7~~
 1526 if, during the inspection, the registered nurse determines that
 1527 extended congregate care services are being provided
 1528 appropriately~~7~~ and if the facility has no class I or class II
 1529 violations and no uncorrected class III violations. The agency
 1530 must first consult with the office ~~long-term care ombudsman~~
 1531 ~~council~~ for the area in which the facility is located to
 1532 determine whether ~~if~~ any complaints have been made and
 1533 substantiated about the quality of services or care. The agency
 1534 may not waive one of the required yearly monitoring visits if
 1535 complaints have been made and substantiated.

- 1536 3. A facility that is licensed to provide extended
 1537 congregate care services must:
- 1538 a. Demonstrate the capability to meet unanticipated
 1539 resident service needs.
 - 1540 b. Offer a physical environment that promotes a homelike
 1541 setting, provides for resident privacy, promotes resident

1542 independence, and allows sufficient congregate space as defined
 1543 by rule.

1544 c. Have sufficient staff available, taking into account
 1545 the physical plant and firesafety features of the building, to
 1546 assist with the evacuation of residents in an emergency.

1547 d. Adopt and follow policies and procedures that maximize
 1548 resident independence, dignity, choice, and decisionmaking to
 1549 permit residents to age in place, so that moves due to changes
 1550 in functional status are minimized or avoided.

1551 e. Allow residents or, if applicable, a resident's
 1552 representative, designee, surrogate, guardian, or attorney in
 1553 fact to make a variety of personal choices, participate in
 1554 developing service plans, and share responsibility in
 1555 decisionmaking.

1556 f. Implement the concept of managed risk.

1557 g. Provide, directly or through contract, the services of
 1558 a person licensed under part I of chapter 464.

1559 h. In addition to the training mandated in s. 429.52,
 1560 provide specialized training as defined by rule for facility
 1561 staff.

1562 4. A facility that is licensed to provide extended
 1563 congregate care services is exempt from the criteria for
 1564 continued residency set forth in rules adopted under s. 429.41.
 1565 A licensed facility must adopt its own requirements within
 1566 guidelines for continued residency set forth by rule. However,
 1567 the facility may not serve residents who require 24-hour nursing

1568 supervision. A licensed facility that provides extended
1569 congregate care services must also provide each resident with a
1570 written copy of facility policies governing admission and
1571 retention.

1572 5. The primary purpose of extended congregate care
1573 services is to allow residents, as they become more impaired,
1574 the option of remaining in a familiar setting from which they
1575 would otherwise be disqualified for continued residency. A
1576 facility licensed to provide extended congregate care services
1577 may also admit an individual who exceeds the admission criteria
1578 for a facility with a standard license, if the individual is
1579 determined appropriate for admission to the extended congregate
1580 care facility.

1581 6. Before the admission of an individual to a facility
1582 licensed to provide extended congregate care services, the
1583 individual must undergo a medical examination as provided in s.
1584 429.26(4) and the facility must develop a preliminary service
1585 plan for the individual.

1586 7. When a facility can no longer provide or arrange for
1587 services in accordance with the resident's service plan and
1588 needs and the facility's policy, the facility shall make
1589 arrangements for relocating the person in accordance with s.
1590 429.28(1)(k).

1591 8. Failure to provide extended congregate care services
1592 may result in denial of extended congregate care license
1593 renewal.

1594 Section 37. Subsection (9) of section 429.19, Florida
 1595 Statutes, is amended to read:

1596 429.19 Violations; imposition of administrative fines;
 1597 grounds.—

1598 (9) The agency shall develop and disseminate an annual
 1599 list of all facilities sanctioned or fined for violations of
 1600 state standards, the number and class of violations involved,
 1601 the penalties imposed, and the current status of cases. The list
 1602 shall be disseminated, at no charge, to the Department of
 1603 Elderly Affairs, the Department of Health, the Department of
 1604 Children and Families ~~Family Services~~, the Agency for Persons
 1605 with Disabilities, the area agencies on aging, the Florida
 1606 Statewide Advocacy Council, and the office ~~state and local~~
 1607 ~~ombudsman councils~~. The Department of Children and Families
 1608 ~~Family Services~~ shall disseminate the list to service providers
 1609 under contract to the department who are responsible for
 1610 referring persons to a facility for residency. The agency may
 1611 charge a fee commensurate with the cost of printing and postage
 1612 to other interested parties requesting a copy of this list. This
 1613 information may be provided electronically or through the
 1614 agency's Internet site.

1615 Section 38. Subsection (8) of section 429.26, Florida
 1616 Statutes, is amended to read:

1617 429.26 Appropriateness of placements; examinations of
 1618 residents.—

1619 (8) The Department of Children and Families ~~Family~~
 1620 ~~Services~~ may require an examination for supplemental security
 1621 income and optional state supplementation recipients residing in
 1622 facilities at any time and shall provide the examination
 1623 whenever a resident's condition requires it. Any facility
 1624 administrator; personnel of the agency, the department, or the
 1625 Department of Children and Families ~~Family Services~~; or
 1626 representative of the Office of State Long-Term Care Ombudsman
 1627 ~~long-term care ombudsman council member~~ who believes a resident
 1628 needs to be evaluated shall notify the resident's case manager,
 1629 who shall take appropriate action. A report of the examination
 1630 findings shall be provided to the resident's case manager and
 1631 the facility administrator to help the administrator meet his or
 1632 her responsibilities under subsection (1).

1633 Section 39. Subsection (2) and paragraph (b) of subsection
 1634 (3) of section 429.28, Florida Statutes, are amended to read:

1635 429.28 Resident bill of rights.—

1636 (2) The administrator of a facility shall ensure that a
 1637 written notice of the rights, obligations, and prohibitions set
 1638 forth in this part is posted in a prominent place in each
 1639 facility and read or explained to residents who cannot read.
 1640 This notice must ~~shall~~ include the statewide toll-free telephone
 1641 number and e-mail address of the state ombudsman program and the
 1642 telephone number of the ~~name, address, and telephone numbers of~~
 1643 ~~the local ombudsman council~~ and central abuse hotline and, when
 1644 applicable, the Advocacy Center for Persons with Disabilities,

1645 Inc., and the Florida local advocacy council, where complaints
 1646 may be lodged. The facility must ensure a resident's access to a
 1647 telephone to call the state local ~~ombudsman program council~~, the
 1648 central abuse hotline, the Advocacy Center for Persons with
 1649 Disabilities, Inc., and the Florida local advocacy council.

1650 (3)

1651 (b) In order to determine whether the facility is
 1652 adequately protecting residents' rights, the biennial survey
 1653 shall include private informal conversations with a sample of
 1654 residents and consultation with the state ombudsman program
 1655 ~~council~~ in the planning and service area in which the facility
 1656 is located to discuss residents' experiences within the
 1657 facility.

1658 Section 40. Section 429.34, Florida Statutes, is amended
 1659 to read:

1660 429.34 Right of entry and inspection.—In addition to the
 1661 requirements of s. 408.811, a ~~any~~ duly designated officer or
 1662 employee of the department, the Department of Children and
 1663 Families ~~Family Services~~, the Medicaid Fraud Control Unit of the
 1664 Office of the Attorney General, the state or local fire marshal,
 1665 or a representative member of the Office of the State Long-Term
 1666 Care Ombudsman ~~may state or local long-term care ombudsman~~
 1667 ~~council shall have the right to~~ enter unannounced upon and into
 1668 the premises of any facility licensed under ~~pursuant to~~ this
 1669 part in order to determine the state of compliance with ~~the~~
 1670 ~~provisions of~~ this part, part II of chapter 408, and applicable

1671 rules. Data collected by the office ~~state or local long-term~~
 1672 ~~care ombudsman councils~~ or the state or local advocacy councils
 1673 may be used by the agency in investigations involving violations
 1674 of regulatory standards.

1675 Section 41. Subsection (2) of section 429.35, Florida
 1676 Statutes, is amended to read:

1677 429.35 Maintenance of records; reports.—

1678 (2) Within 60 days after the date of the biennial
 1679 inspection visit required under s. 408.811 or within 30 days
 1680 after the date of any interim visit, the agency shall forward
 1681 the results of the inspection to the office ~~local ombudsman~~
 1682 ~~council in whose planning and service area, as defined in part~~
 1683 ~~II of chapter 400, the facility is located;~~ to at least one
 1684 public library or, in the absence of a public library, the
 1685 county seat in the county in which the inspected assisted living
 1686 facility is located; and, when appropriate, to the district
 1687 Adult Services and Mental Health Program Offices.

1688 Section 42. Subsection (6) of section 429.67, Florida
 1689 Statutes, is amended to read:

1690 429.67 Licensure.—

1691 (6) In addition to the requirements of s. 408.811, access
 1692 to a licensed adult family-care home must be provided at
 1693 reasonable times for the appropriate officials of the
 1694 department, the Department of Health, the Department of Children
 1695 and Families ~~Family Services~~, the agency, and the State Fire
 1696 Marshal, who are responsible for the development and maintenance

1697 of fire, health, sanitary, and safety standards, to inspect the
 1698 facility to assure compliance with these standards. In addition,
 1699 access to a licensed adult family-care home must be provided at
 1700 reasonable times to representatives of the Office of State ~~for~~
 1701 ~~the local~~ Long-Term Care Ombudsman ~~council~~.

1702 Section 43. Subsection (2) of section 429.85, Florida
 1703 Statutes, is amended to read:

1704 429.85 Residents' bill of rights.—

1705 (2) The provider shall ensure that residents and their
 1706 legal representatives are made aware of the rights, obligations,
 1707 and prohibitions set forth in this part. Residents must also be
 1708 given the statewide toll-free telephone number and e-mail
 1709 address of the state ombudsman program and the telephone number
 1710 of names, addresses, and telephone numbers of the local
 1711 ~~ombudsman council~~ and the central abuse hotline where they may
 1712 lodge complaints.

1713 Section 44. Subsection (17) of section 744.444, Florida
 1714 Statutes, is amended to read:

1715 744.444 Power of guardian without court approval.—Without
 1716 obtaining court approval, a plenary guardian of the property, or
 1717 a limited guardian of the property within the powers granted by
 1718 the order appointing the guardian or an approved annual or
 1719 amended guardianship report, may:

1720 (17) Provide confidential information about a ward which
 1721 ~~that~~ is related to an investigation arising under part I of
 1722 chapter 400 to a representative of the Office of State Long-Term

CS/HB 91

2014

1723 Care Ombudsman ~~local or state ombudsman council member~~
1724 conducting such an investigation. Any such ombudsman shall have
1725 a duty to maintain the confidentiality of such information.
1726 Section 45. This act shall take effect July 1, 2014.