



906328

576-02161-15

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to the state ombudsman program;
amending s. 400.0060, F.S.; revising and defining
terms; amending s. 400.0061, F.S.; revising
legislative intent with respect to citizen ombudsmen;
deleting references to ombudsman councils and
transferring their responsibilities to representatives
of the Office of State Long-Term Care Ombudsman;
amending s. 400.0063, F.S.; revising duties of the
office; amending s. 400.0065, F.S.; revising the
purpose of the office; revising the duties and
authority of the state ombudsman; requiring the state
ombudsman to submit an annual report to the Governor,
the Legislature, and specified agencies and entities;
amending s. 400.0067, F.S.; revising duties and
membership of the State Long-Term Care Ombudsman
Council; amending s. 400.0069, F.S.; requiring the
state ombudsman to designate and direct program
districts; requiring each district to conduct
quarterly public meetings; providing duties of
representatives of the office in the districts;
revising the appointments of and qualifications for
district ombudsmen; prohibiting certain individuals
from serving as ombudsmen; amending s. 400.0070, F.S.;
providing conditions under which a representative of
the office could be found to have a conflict of
interest; requiring the Department of Elderly Affairs,



906328

576-02161-15

28 in consultation with the state ombudsman, to define by
29 rule what constitutes a conflict of interest; amending
30 s. 400.0071, F.S.; requiring the Department of Elderly
31 Affairs to consult with the state ombudsman to adopt
32 rules pertaining to complaint procedures; amending s.
33 400.0073, F.S.; providing procedures for investigation
34 of complaints; amending s. 400.0074, F.S.; revising
35 procedures for conducting onsite administrative
36 assessments; authorizing the department to adopt
37 rules; amending s. 400.0075, F.S.; revising complaint
38 notification and resolution procedures; amending s.
39 400.0078, F.S.; providing for a resident or
40 representative of a resident to receive additional
41 information regarding resident rights; amending s.
42 400.0079, F.S.; providing immunity from liability for
43 a representative of the office under certain
44 circumstances; amending s. 400.0081, F.S.; requiring
45 long-term care facilities to provide representatives
46 of the office with access to facilities, residents,
47 and records for certain purposes; amending s.
48 400.0083, F.S.; conforming provisions to changes made
49 by the act; amending s. 400.0087, F.S.; providing for
50 the office to coordinate ombudsman services with
51 Disability Rights Florida; amending s. 400.0089, F.S.;
52 conforming provisions to changes made by the act;
53 amending s. 400.0091, F.S.; revising training
54 requirements for representatives of the office and
55 ombudsmen; amending ss. 20.41, 400.021, 400.022,
56 400.0255, 400.162, 400.19, 400.191, and 400.23, F.S.;



906328

576-02161-15

57 conforming provisions to changes made by the act;
58 amending s. 400.235, F.S.; conforming provisions to
59 changes made by the act; revising the additional
60 criteria for recognition as a Gold Seal Program
61 facility; amending ss. 415.102, 415.1034, 415.104,
62 415.1055, 415.106, 415.107, 429.02, 429.19, 429.26,
63 429.28, 429.34, 429.35, 429.67, and 429.85, F.S.;
64 conforming provisions to changes made by the act;
65 providing an effective date.

66

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

68

69 Section 1. Section 400.0060, Florida Statutes, is amended
70 to read:

71 400.0060 Definitions.—When used in this part, unless the
72 context clearly dictates otherwise, the term:

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

78 (2) "Agency" means the Agency for Health Care
79 Administration.

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

81 (4) "District" means a geographical area designated by the
82 state ombudsman in which individuals certified as ombudsmen
83 carry out the duties of the State Long-Term Care Ombudsman
84 Program. A district may have one or more local councils.

85 (5)~~(4)~~ "Local council" means a local long-term care



906328

576-02161-15

86 ombudsman council designated by the ombudsman pursuant to s.
87 400.0069. Local councils are also known as district long-term
88 care ombudsman councils or district councils.

89 (6)~~(5)~~ "Long-term care facility" means a nursing home
90 facility, assisted living facility, adult family-care home,
91 board and care facility, or any other similar residential adult
92 care facility.

93 (7)~~(6)~~ "Office" means the Office of the State Long-Term
94 Care Ombudsman Program created by s. 400.0063.

95 (8)~~(7)~~ "Ombudsman" means an individual who has been
96 certified by the state ombudsman as meeting the requirements of
97 ss. 400.0069, 400.0070, and 400.0091 ~~the individual appointed by~~
98 ~~the Secretary of Elderly Affairs to head the Office of State~~
99 ~~Long-Term Care Ombudsman.~~

100 (9) "Representative of the State Long-Term Care Ombudsman
101 Program" means the state ombudsman, an employee of the state or
102 district office certified as an ombudsman or an individual
103 certified as an ombudsman serving on the state or a local
104 council.

105 (10)~~(8)~~ "Resident" means an individual 18 ~~60~~ years of age
106 or older who resides in a long-term care facility.

107 (11)~~(9)~~ "Secretary" means the Secretary of Elderly Affairs.

108 (12)~~(10)~~ "State council" means the State Long-Term Care
109 Ombudsman Council created by s. 400.0067.

110 (13) "State ombudsman" means the State Long-Term Care
111 Ombudsman, who is the individual appointed by the Secretary of
112 Elderly Affairs to head the State Long-Term Care Ombudsman
113 Program.

114 (14) "State ombudsman program" means the State Long-Term



906328

576-02161-15

115 Care Ombudsman Program operating under the direction of the
116 State Long Term Care Ombudsman.

117 Section 2. Section 400.0061, Florida Statutes, is amended
118 to read:

119 400.0061 Legislative findings and intent; long-term care
120 facilities.—

121 (1) The Legislature finds that conditions in long-term care
122 facilities in this state are such that the rights, health,
123 safety, and welfare of residents are not fully ensured by rules
124 of the Department of Elderly Affairs or the Agency for Health
125 Care Administration or by the good faith of owners or operators
126 of long-term care facilities. Furthermore, there is a need for a
127 formal mechanism whereby a long-term care facility resident, a
128 representative of a long-term care facility resident, or any
129 other concerned citizen may make a complaint against the
130 facility or its employees, or against other persons who are in a
131 position to restrict, interfere with, or threaten the rights,
132 health, safety, or welfare of a long-term care facility
133 resident. The Legislature finds that concerned citizens are
134 often more effective advocates for the rights of others than
135 governmental agencies. The Legislature further finds that in
136 order to be eligible to receive an allotment of funds authorized
137 and appropriated under the federal Older Americans Act, the
138 state must establish and operate an Office of State Long-Term
139 Care Ombudsman, to be headed by the State Long-Term Care
140 Ombudsman, and carry out a long-term care ombudsman program.

141 (2) It is the intent of the Legislature, therefore, to use
142 ~~utilize~~ voluntary citizen ombudsman councils under the
143 leadership of the State Long-Term Care Ombudsman ~~ombudsman,~~ and,



906328

576-02161-15

144 through them, to operate a state ~~an~~ ombudsman program, which
145 shall, without interference by any executive agency, undertake
146 to discover, investigate, and determine the presence of
147 conditions or individuals that ~~which~~ constitute a threat to the
148 rights, health, safety, or welfare of the residents of long-term
149 care facilities. To ensure that the effectiveness and efficiency
150 of such investigations are not impeded by advance notice or
151 delay, the Legislature intends that the representatives of the
152 State Long-Term Care Ombudsman Program ~~ombudsman and ombudsman~~
153 ~~councils and their designated representatives~~ not be required to
154 obtain warrants in order to enter into or conduct investigations
155 or onsite administrative assessments of long-term care
156 facilities. It is the further intent of the Legislature that the
157 environment in long-term care facilities be conducive to the
158 dignity and independence of residents and that investigations by
159 representatives of the State Long-Term Care Ombudsman Program
160 ~~ombudsman councils~~ shall further the enforcement of laws, rules,
161 and regulations that safeguard the health, safety, and welfare
162 of residents.

163 Section 3. Section 400.0063, Florida Statutes, is amended
164 to read:

165 400.0063 Establishment of the ~~Office of~~ State Long-Term
166 Care Ombudsman Program; designation of ombudsman and legal
167 advocate.—

168 (1) There is created the ~~an Office of~~ State Long-Term Care
169 Ombudsman Program in the Department of Elderly Affairs.

170 (2) (a) The ~~Office of~~ State Long-Term Care Ombudsman Program
171 shall be headed by the State Long-Term Care Ombudsman, who shall
172 serve on a full-time basis and shall personally, or through



906328

576-02161-15

173 representatives of the program office, carry out its the
174 purposes and functions ~~of the office~~ in accordance with state
175 and federal law.

176 (b) The state ombudsman shall be appointed by and shall
177 serve at the pleasure of the Secretary of Elderly Affairs. The
178 secretary shall appoint a person who has expertise and
179 experience in the fields of long-term care and advocacy to serve
180 as state ombudsman.

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

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

187 1. Assisting the state ombudsman in carrying out the duties
188 of the office with respect to the abuse, neglect, exploitation
189 or violation of rights of residents of long-term care
190 facilities.

191 2. Assisting the representatives of the State Long-Term
192 Care Ombudsman Program ~~state and local councils~~ in carrying out
193 their responsibilities under this part.

194 3. Pursuing administrative, legal, and other appropriate
195 remedies on behalf of residents.

196 4. Serving as legal counsel to the representatives of the
197 State Long-Term Care Ombudsman Program in ~~state and local~~
198 ~~councils, or individual members thereof, against whom~~ any suit
199 or other legal action that is initiated in connection with the
200 performance of the official duties of the representatives of the
201 State Long-Term Care Ombudsman Program ~~councils or an individual~~



906328

576-02161-15

202 ~~member.~~

203 Section 4. Section 400.0065, Florida Statutes, is amended
204 to read:

205 400.0065 State Long-Term Care Ombudsman Program; duties and
206 responsibilities.—

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

209 (a) Identify, investigate, and resolve complaints made by
210 or on behalf of residents of long-term care facilities relating
211 to actions or omissions by providers or representatives of
212 providers of long-term care services, other public or private
213 agencies, guardians, or representative payees that may adversely
214 affect the health, safety, welfare, or rights of the residents.

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

217 (c) Inform residents, their representatives, and other
218 citizens about obtaining the services of the State Long-Term
219 Care Ombudsman Program and its representatives.

220 (d) Ensure that residents have regular and timely access to
221 the services provided through the State Long-Term Care Program
222 ~~office~~ and that residents and complainants receive timely
223 responses from representatives of the State Long-Term Care
224 Program ~~office~~ to their complaints.

225 (e) Represent the interests of residents before
226 governmental agencies and seek administrative, legal, and other
227 remedies to protect the health, safety, welfare, and rights of
228 the residents.

229 (f) Administer the state and local councils.

230 (g) Analyze, comment on, and monitor the development and



906328

576-02161-15

231 implementation of federal, state, and local laws, rules, and
232 regulations, and other governmental policies and actions, that
233 pertain to the health, safety, welfare, and rights of the
234 residents, with respect to the adequacy of long-term care
235 facilities and services in the state, and recommend any changes
236 in such laws, rules, regulations, policies, and actions as the
237 office determines to be appropriate and necessary.

238 (h) Provide technical support for the development of
239 resident and family councils to protect the well-being and
240 rights of residents.

241 (2) The State Long-Term Care Ombudsman has ~~shall have~~ the
242 duty and authority to:

243 (a) Establish and coordinate districts and local councils
244 throughout the state.

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

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



906328

576-02161-15

260 Ombudsman Program for purposes of this part.

261 (d) Contract for services necessary to carry out the
262 activities of the office.

263 (e) Apply for, receive, and accept grants, gifts, or other
264 payments, including, but not limited to, real property, personal
265 property, and services from a governmental entity or other
266 public or private entity or person, and make arrangements for
267 the use of such grants, gifts, or payments.

268 (f) Coordinate, to the greatest extent possible, state and
269 local ombudsman services with the protection and advocacy
270 systems for individuals with developmental disabilities and
271 mental illnesses and with legal assistance programs for the poor
272 through adoption of memoranda of understanding and other means.

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

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

279 (h)~~(i)~~ Prepare an annual report describing the activities
280 carried out by the office, the state council, the districts and
281 the local councils in the year for which the report is prepared.
282 The state ombudsman shall submit the report to the secretary,
283 the United States Assistant Secretary for Aging, the Governor,
284 the President of the Senate, the Speaker of the House of
285 Representatives, the Secretary of Children and Families, and the
286 Secretary of the Agency for Health Care Administration at least
287 30 days before the convening of the regular session of the
288 Legislature. ~~The secretary shall in turn submit the report to~~



906328

576-02161-15

289 ~~the United States Assistant Secretary for Aging, the Governor,~~
290 ~~the President of the Senate, the Speaker of the House of~~
291 ~~Representatives, the Secretary of Children and Families, and the~~
292 ~~Secretary of Health Care Administration.~~ The report must shall,
293 at a minimum:

294 1. Contain and analyze data collected concerning complaints
295 about and conditions in long-term care facilities and the
296 disposition of such complaints.

297 2. Evaluate the problems experienced by residents.

298 3. Analyze the successes of the State Long-Term Care
299 Ombudsman Program ~~ombudsman program~~ during the preceding year,
300 including an assessment of how successfully the program has
301 carried out its responsibilities under the Older Americans Act.

302 4. Provide recommendations for policy, regulatory, and
303 statutory changes designed to solve identified problems; resolve
304 residents' complaints; improve residents' lives and quality of
305 care; protect residents' rights, health, safety, and welfare;
306 and remove any barriers to the optimal operation of the State
307 Long-Term Care Ombudsman Program.

308 5. Contain recommendations from the State Long-Term Care
309 Ombudsman Council regarding program functions and activities and
310 recommendations for policy, regulatory, and statutory changes
311 designed to protect residents' rights, health, safety, and
312 welfare.

313 6. Contain any relevant recommendations from the
314 representatives of the State Long-Term Care Ombudsman Program
315 ~~local councils~~ regarding program functions and activities.

316 Section 5. Section 400.0067, Florida Statutes, is amended
317 to read:



906328

576-02161-15

318 400.0067 State Long-Term Care Ombudsman Council; duties;
319 membership.—

320 (1) There is created within the ~~Office of~~ State Long-Term
321 Care Ombudsman Program, the State Long-Term Care Ombudsman
322 Council.

323 (2) The State Long-Term Care Ombudsman Council shall:

324 (a) Serve as an advisory body to assist the state ombudsman
325 in reaching a consensus among districts and local councils on
326 issues affecting residents and impacting the optimal operation
327 of the program.

328 (b) Serve as an appellate body in receiving from the
329 districts or local councils complaints not resolved at the
330 district or local level. Any individual member or members of the
331 state council may enter any long-term care facility involved in
332 an appeal, pursuant to the conditions specified in s.
333 400.0074(2).

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

338 (d) Assist the ombudsman in eliciting, receiving,
339 responding to, and resolving complaints made by or on behalf of
340 residents.

341 (e) Elicit and coordinate state, district, local, and
342 voluntary organizational assistance for the purpose of improving
343 the care received by residents.

344 (f) Assist the state ombudsman in preparing the annual
345 report described in s. 400.0065.

346 (3) The State Long-Term Care Ombudsman Council consists



906328

576-02161-15

347 ~~shall be composed~~ of one active certified ombudsman from each
348 local council in a district ~~member elected by each local council~~
349 plus three at-large members ~~appointed by the Governor.~~

350 (a) Each local council in a district must select ~~shall~~
351 ~~elect by majority vote~~ a representative of its choice to serve
352 ~~from among the council members to represent the interests of the~~
353 ~~local council~~ on the state council. ~~A local council chair may~~
354 ~~not serve as the representative of the local council on the~~
355 ~~state council.~~

356 (b)1. The state ombudsman secretary, ~~after consulting with~~
357 ~~the ombudsman,~~ shall submit to the secretary ~~Governor~~ a list of
358 individuals ~~persons~~ recommended for appointment to the at-large
359 positions on the state council. The list may ~~shall~~ not include
360 the name of any individual ~~person~~ who is currently serving in a
361 district ~~on a local council.~~

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

364 ~~3. If the Governor does not appoint an at-large member to~~
365 ~~fill a vacant position within 60 days after the list is~~
366 ~~submitted, the secretary, after consulting with the ombudsman,~~
367 ~~shall appoint an at-large member to fill that vacant position.~~

368 (4) (a) (e)1. All state council members shall serve 3-year
369 terms.

370 2. A member of the state council may not serve more than
371 two consecutive terms.

372 3. A local council may recommend replacement ~~removal~~ of its
373 selected ~~elected~~ representative from the state council ~~by a~~
374 ~~majority vote.~~ If the council votes to replace ~~remove~~ its
375 representative, the local council chair shall immediately notify



906328

576-02161-15

376 the state ombudsman. ~~The secretary shall advise the Governor of~~
377 ~~the local council's vote upon receiving notice from the~~
378 ~~ombudsman.~~

379 4. The position of any member missing three state council
380 meetings within a 1-year period without cause may be declared
381 vacant by the state ombudsman. The findings of the state
382 ombudsman regarding cause shall be final and binding.

383 ~~(b)5.~~ Any vacancy on the state council shall be filled in
384 the same manner as the original appointment.

385 ~~(c)(d)~~1. The state council shall elect a chair to serve for
386 a term of 1 year. A chair may not serve more than two
387 consecutive terms.

388 2. The chair shall select a vice chair from among the
389 members. The vice chair shall preside over the state council in
390 the absence of the chair.

391 3. The chair may create additional executive positions as
392 necessary to carry out the duties of the state council. Any
393 person appointed to an executive position shall serve at the
394 pleasure of the chair, and his or her term shall expire on the
395 same day as the term of the chair.

396 4. A chair may be immediately removed from office before
397 ~~prior to~~ the expiration of his or her term by a vote of two-
398 thirds of all state council members present at any meeting at
399 which a quorum is present. If a chair is removed from office
400 before ~~prior to~~ the expiration of his or her term, a replacement
401 chair shall be chosen during the same meeting in the same manner
402 as described in this paragraph, and the term of the replacement
403 chair shall begin immediately. The replacement chair shall serve
404 for the remainder of the term and is eligible to serve two



906328

576-02161-15

405 subsequent consecutive terms.

406 ~~(d)-(e)~~1. The state council shall meet upon the call of the
407 chair or upon the call of the state ombudsman. The state council
408 shall meet at least quarterly but may meet more frequently as
409 needed.

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

413 3. The state council may not vote on or otherwise make any
414 decisions resulting in a recommendation that will directly
415 impact the state council, the district, or any local council,
416 outside of a publicly noticed meeting at which a quorum is
417 present.

418 ~~(e)-(f)~~ Members may not ~~shall~~ receive ~~no~~ compensation for
419 attendance at state council meetings but shall, with approval
420 from the state ombudsman, be reimbursed for per diem and travel
421 expenses as provided in s. 112.061.

422 Section 6. Section 400.0069, Florida Statutes, is amended
423 to read:

424 400.0069 Long-term care ombudsman districts; local long-
425 term care ombudsman councils; duties; appointment membership.-

426 (1) (a) The state ombudsman shall designate districts and
427 each district shall designate local long-term care ombudsman
428 councils to carry out the duties of the State Long-Term Care
429 Ombudsman Program within local communities. Each district local
430 council shall function under the direction of the state
431 ombudsman.

432 (b) The state ombudsman shall ensure that there is at least
433 one employee of the department certified as a long-term care



906328

576-02161-15

434 ombudsman and a least one local council operating in each
435 district of the department's planning and service areas. The
436 state ombudsman may create additional local councils as
437 necessary to ensure that residents throughout the state have
438 adequate access to State Long-Term Care Ombudsman Program
439 services. ~~The ombudsman, after approval from the secretary,~~
440 ~~shall designate the jurisdictional boundaries of each local~~
441 ~~council.~~

442 (c) Each district shall convene a public meeting at least
443 quarterly.

444 (2) The duties of the representatives of the State Long-
445 Term Care Ombudsman Program local councils are to:

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

449 (b) Discover, investigate, and determine the existence of
450 abuse, ~~or~~ neglect, or exploitation in any long-term care
451 facility and to use the procedures provided for in ss. 415.101-
452 415.113 when applicable.

453 (c) Identify ~~Elicit, receive,~~ investigate, ~~respond to,~~ and
454 resolve complaints made by or on behalf of residents relating to
455 actions or omissions by providers of long-term care services,
456 other public agencies, guardians, or representative payees which
457 may adversely affect the health, safety, welfare, or rights of
458 residents.

459 (d) Review and, if necessary, comment on all existing or
460 proposed rules, regulations, and other governmental policies and
461 actions relating to long-term care facilities that may
462 potentially have an effect on the ~~rights,~~ health, safety,



906328

576-02161-15

463 welfare, and rights ~~welfare~~ of residents.

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

468 (f) Recommend that the state ombudsman and the legal
469 advocate seek administrative, legal, and other remedies to
470 protect the health, safety, welfare, and rights of ~~the~~
471 residents.

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

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

476 (3) In order to carry out the duties specified in
477 subsection (2), a representative of the State Long-Term Care
478 Ombudsman Program or a member of a local council is authorized
479 to enter any long-term care facility without notice or first
480 obtaining a warrant; however, subject to the provisions of s.
481 400.0074(2) may apply regarding notice of a followup
482 administrative assessment.

483 (4) Each district and local council shall be composed of
484 ombudsmen ~~members~~ whose primary residences are ~~residence is~~
485 located within the boundaries of the district ~~local council's~~
486 jurisdiction.

487 (a) Upon good cause shown and with the consent of the
488 ombudsman, the state ombudsman may appoint an ombudsman to
489 another district. The ombudsman shall strive to ensure that each
490 local council include the following persons as members:

491 1. At least one medical or osteopathic physician whose



906328

576-02161-15

492 practice includes or has included a substantial number of
493 geriatric patients and who may practice in a long-term care
494 facility;

495 2. At least one registered nurse who has geriatric
496 experience;

497 3. At least one licensed pharmacist;

498 4. At least one registered dietitian;

499 5. At least six nursing home residents or representative
500 consumer advocates for nursing home residents;

501 6. At least three residents of assisted living facilities
502 or adult family-care homes or three representative consumer
503 advocates for alternative long-term care facility residents;

504 7. At least one attorney; and

505 8. At least one professional social worker.

506 (b) The following individuals may not be appointed as
507 ombudsmen:

508 1. The owner or representative of a long-term care
509 facility.

510 2. A provider or representative of a provider of long-term
511 care service.

512 3. An employee of the agency.

513 4. An employee of the department, except for staff
514 certified as ombudsmen in the district offices.

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

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

517 ~~(b) In no case shall the medical director of a long-term~~
518 ~~care facility or an employee of the agency, the department, the~~
519 ~~Department of Children and Families, or the Agency for Persons~~
520 ~~with Disabilities serve as a member or as an ex officio member~~



906328

576-02161-15

521 ~~of a council.~~

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

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

525 ~~The ombudsman shall review the individual's application and~~
526 ~~advise the secretary of his or her recommendation for approval~~
527 ~~or disapproval of the candidate's membership on the local~~
528 ~~council. If the secretary approves of the individual's~~
529 ~~membership, the individual shall be appointed as a member of the~~
530 ~~local council.~~

531 2. Successfully complete a level 2 background screening
532 pursuant to s. 430.0402 and chapter 435.

533 (b) The state ombudsman shall approve or deny the
534 appointment of the individual as an ombudsman ~~secretary may~~
535 ~~rescind the ombudsman's approval of a member on a local council~~
536 ~~at any time.~~ If the state ombudsman ~~secretary~~ rescinds the
537 approval of a member on a local council, the state ombudsman
538 shall ensure that the individual is immediately removed from the
539 local council on which he or she serves and the individual may
540 no longer represent the State Long-Term Care Ombudsman Program
541 until the state ombudsman ~~secretary~~ provides his or her
542 approval.

543 (c) Upon appointment as an ombudsman, the individual may
544 participate in district activities but may not represent the
545 program or conduct any authorized program duties until the
546 individual has completed the initial training specified in s.
547 400.0091(1) and has been certified by the state ombudsman.

548 (d) The state ombudsman may rescind the appointment of an
549 individual as an ombudsman for good cause shown, such as



906328

576-02161-15

550 development of a conflict of interest, failure to adhere to the
551 policies and procedures established by the State Long Term Care
552 Program, or demonstrative inability to carry out the
553 responsibilities of the State Long Term Care Program. After the
554 appointment is rescinded, the individual may not conduct any
555 duties as an ombudsman and may not represent the State Long-Term
556 Care Ombudsman Program.

557 (e) ~~(e)~~ A local council may recommend the removal of one or
558 more of its members by submitting to the state ombudsman a
559 resolution adopted by a two-thirds vote of the members of the
560 council stating the name of the member or members recommended
561 for removal and the reasons for the recommendation. If such a
562 recommendation is adopted by a local council, the local council
563 chair or district manager ~~coordinator~~ shall immediately report
564 the council's recommendation to the state ombudsman. The state
565 ombudsman shall review the recommendation of the local council
566 and advise the district manager and local council chair
567 ~~secretary~~ of his or her decision ~~recommendation~~ regarding
568 removal of the council member or members.

569 (6) (a) Each local council shall elect a chair for a term of
570 1 year. There shall be no limitation on the number of terms that
571 an approved member of a local council may serve as chair.

572 (b) The chair shall select a vice chair from among the
573 members of the council. The vice chair shall preside over the
574 council in the absence of the chair.

575 (c) The chair may create additional executive positions as
576 necessary to carry out the duties of the local council. Any
577 person appointed to an executive position shall serve at the
578 pleasure of the chair, and his or her term shall expire on the



906328

576-02161-15

579 same day as the term of the chair.

580 (d) A chair may be immediately removed from office prior to
581 the expiration of his or her term by a vote of two-thirds of the
582 members of the local council. If any chair is removed from
583 office before ~~prior to~~ the expiration of his or her term, a
584 replacement chair shall be elected during the same meeting, and
585 the term of the replacement chair shall begin immediately. The
586 replacement chair shall serve for the remainder of the term of
587 the person he or she replaced.

588 (7) Each local council shall meet upon the call of its
589 chair or upon the call of the ombudsman. Each local council
590 shall meet at least once a month but may meet more frequently if
591 necessary.

592 (8) An ombudsman may not ~~A member of a local council shall~~
593 receive ~~no~~ compensation but shall, with approval from the state
594 ombudsman, be reimbursed for travel expenses ~~both within and~~
595 ~~outside the jurisdiction of the local council~~ in accordance with
596 the provisions of s. 112.061.

597 (9) A representative of the State Long-Term Care Ombudsman
598 Program may ~~The local councils are authorized to~~ call upon
599 appropriate state agencies ~~of state government~~ for such
600 professional assistance as ~~may be~~ needed in the discharge of his
601 or her ~~their~~ duties, and such. ~~All~~ state agencies shall
602 cooperate ~~with the local councils~~ in providing requested
603 information and agency representation ~~at council meetings.~~

604 Section 7. Section 400.0070, Florida Statutes, is amended
605 to read:

606 400.0070 Conflicts of interest.—

607 (1) A representative of the State Long-Term Care Ombudsman



906328

576-02161-15

608 Program may ~~The ombudsman shall~~ not:

609 (a) Have a direct involvement in the licensing or
610 certification of, or an ownership or investment interest in, a
611 long-term care facility or a provider of a long-term care
612 service.

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

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

619 (2) Each representative of the State Long-Term Care
620 Ombudsman Program ~~employee of the office, each state council~~
621 ~~member, and each local council member~~ shall certify that he or
622 she does not have a ~~has no~~ conflict of interest.

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

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

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



906328

576-02161-15

637 Section 8. Section 400.0071, Florida Statutes, is amended
638 to read:

639 400.0071 State Long-Term Care Ombudsman Program complaint
640 procedures.—The department, in consultation with the state
641 ombudsman, shall adopt rules implementing state and local
642 complaint procedures. The rules must include procedures for
643 receiving, investigating, identifying, and resolving complaints
644 concerning the health, safety, welfare, and rights of
645 residents.÷

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

648 ~~(2) Conducting investigations of a long-term care facility~~
649 ~~or an employee of a long-term care facility subsequent to~~
650 ~~receiving a complaint.~~

651 ~~(3) Conducting onsite administrative assessments of long-~~
652 ~~term care facilities.~~

653 Section 9. Section 400.0073, Florida Statutes, is amended
654 to read:

655 400.0073 State and local ombudsman council investigations.—

656 (1) A representative of the State Long-Term Care Ombudsman
657 Program local council shall identify and investigate, within a
658 reasonable time after a complaint is made, by or on behalf any
659 ~~complaint~~ of a resident relating to actions or omissions by
660 providers or representatives of providers of long-term care
661 services, other public agencies, guardians, or representative
662 payees which may adversely affect the health, safety, welfare,
663 or rights of residents., ~~a representative of a resident, or any~~
664 ~~other credible source based on an action or omission by an~~
665 ~~administrator, an employee, or a representative of a long-term~~



906328

576-02161-15

666 ~~care facility which might be:~~
667 ~~(a) Contrary to law;~~
668 ~~(b) Unreasonable, unfair, oppressive, or unnecessarily~~
669 ~~discriminatory, even though in accordance with law;~~
670 ~~(c) Based on a mistake of fact;~~
671 ~~(d) Based on improper or irrelevant grounds;~~
672 ~~(e) Unaccompanied by an adequate statement of reasons;~~
673 ~~(f) Performed in an inefficient manner; or~~
674 ~~(g) Otherwise adversely affecting the health, safety,~~
675 ~~welfare, or rights of a resident.~~
676 ~~(2) In an investigation, both the state and local councils~~
677 ~~have the authority to hold public hearings.~~
678 ~~(2)(3)~~ Subsequent to an appeal from a local council, the
679 state council may investigate any complaint received by the
680 local council involving a long-term care facility or a resident.
681 ~~(3)(4)~~ If a representative of the State Long-Term Care
682 Ombudsman Program ~~the ombudsman or any state or local council~~
683 ~~member~~ is not allowed to enter a long-term care facility, the
684 administrator of the facility shall be considered to have
685 interfered with a representative of the State Long-Term Care
686 Ombudsman Program ~~office, the state council, or the local~~
687 ~~council~~ in the performance of official duties as described in s.
688 400.0083(1) and to have violated ~~committed a violation of~~ this
689 part. The representative of the State Long-Term Care Ombudsman
690 Program ~~ombudsman~~ shall report a facility's refusal to allow
691 entry to the state ombudsman or his or her designee, who shall
692 report the incident to the agency, and the agency shall record
693 the report and take it into consideration when determining
694 actions allowable under s. 400.102, s. 400.121, s. 429.14, s.



906328

576-02161-15

695 429.19, s. 429.69, or s. 429.71.

696 Section 10. Section 400.0074, Florida Statutes, is amended
697 to read:

698 400.0074 Local ombudsman council onsite administrative
699 assessments.—

700 (1) A representative of the State Long-Term Care Ombudsman
701 Program shall ~~In addition to any specific investigation~~
702 ~~conducted pursuant to a complaint, the local council shall~~
703 conduct, at least annually, an onsite administrative assessment
704 of each nursing home, assisted living facility, and adult
705 family-care home ~~within its jurisdiction~~. This administrative
706 assessment must be resident-centered and must ~~shall~~ focus on
707 factors affecting the rights, health, safety, and welfare of the
708 residents. Each local council is encouraged to conduct a similar
709 onsite administrative assessment of each additional long-term
710 care facility within its jurisdiction.

711 (2) An onsite administrative assessment conducted by a
712 local council shall be subject to the following conditions:

713 (a) To the extent possible and reasonable, the
714 administrative assessment may ~~assessments shall~~ not duplicate
715 the efforts of ~~the agency~~ surveys and inspections of long-term
716 care facilities ~~conducted by state agencies under part II of~~
717 ~~this chapter and parts I and II of chapter 429.~~

718 (b) An administrative assessment shall be conducted at a
719 time and for a duration necessary to produce the information
720 required to complete the assessment ~~carry out the duties of the~~
721 ~~local council.~~

722 (c) Advance notice of an administrative assessment may not
723 be provided to a long-term care facility, except that notice of



906328

576-02161-15

724 followup assessments on specific problems may be provided.

725 (d) A representative of the State Long-Term Care Ombudsman
726 Program local council member physically present for the
727 administrative assessment must ~~shall~~ identify himself or herself
728 to the administrator and ~~cite the specific statutory authority~~
729 ~~for his or her assessment~~ of the facility or his or her
730 designee.

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

733 (f) A representative of the State Long-Term Care Ombudsman
734 Program local council member may not enter a single-family
735 residential unit within a long-term care facility during an
736 administrative assessment without the permission of the resident
737 or the representative of the resident.

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

741 (3) Regardless of jurisdiction, the state ombudsman may
742 authorize a state or local council member to assist another
743 local council to perform the administrative assessments
744 described in this section.

745 (4) An onsite administrative assessment may not be
746 accomplished by forcible entry. However, if a representative of
747 the State Long-Term Care Ombudsman Program ~~the ombudsman or a~~
748 ~~state or local council member~~ is not allowed to enter a long-
749 term care facility, the administrator of the facility shall be
750 considered to have interfered with a representative of the State
751 Long-Term Care Ombudsman Program ~~office, the state council, or~~
752 ~~the local council~~ in the performance of official duties as



906328

576-02161-15

753 described in s. 400.0083(1) and to have committed a violation of
754 this part. The representative of the State Long-Term Care
755 Ombudsman Program ~~ombudsman~~ shall report the refusal by a
756 facility to allow entry to the state ombudsman or his or her
757 designee, who shall report the incident to the agency, and the
758 agency shall record the report and take it into consideration
759 when determining actions allowable under s. 400.102, s. 400.121,
760 s. 429.14, s. 429.19, s. 429.69, or s. 429.71.

761 (5) The department, in consultation with the state
762 ombudsman, may adopt rules implementing procedures for
763 conducting onsite administrative assessments of long-term care
764 facilities.

765 Section 11. Section 400.0075, Florida Statutes, is amended
766 to read:

767 400.0075 Complaint notification and resolution procedures.—

768 (1) (a) Any complaint ~~or problem~~ verified by a
769 representative of the State Long-Term Care Ombudsman Program ~~an~~
770 ~~ombudsman council~~ as a result of an investigation which is
771 determined by the local council to require remedial action may
772 ~~or onsite administrative assessment, which complaint or problem~~
773 ~~is determined to require remedial action by the local council,~~
774 ~~shall~~ be identified and brought to the attention of the long-
775 term care facility administrator subject to the confidentiality
776 provisions of s. 400.0077 ~~in writing~~. Upon receipt of the
777 information ~~such document~~, the administrator, with the
778 concurrence of the representative of the State Long-Term Care
779 Ombudsman Program ~~local council chair~~, shall establish target
780 dates for taking appropriate remedial action. If, by the target
781 date, the remedial action is not completed or forthcoming, the



906328

576-02161-15

782 representative of the State Long-Term Care Ombudsman Program may
783 extend the target date if there is reason to believe such action
784 would facilitate the resolution of the complaint, or the
785 representative of the State Long-Term Care Ombudsman Program may
786 refer the complaint to the district manager who may refer the
787 complaint to the state council. ~~local council chair may, after~~
788 ~~obtaining approval from the ombudsman and a majority of the~~
789 ~~members of the local council:~~

790 1. ~~Extend the target date if the chair has reason to~~
791 ~~believe such action would facilitate the resolution of the~~
792 ~~complaint.~~

793 2. ~~In accordance with s. 400.0077, publicize the complaint,~~
794 ~~the recommendations of the council, and the response of the~~
795 ~~long-term care facility.~~

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

797 (b) If the representative of the State Long-Term Care
798 Ombudsman Program determines ~~local council chair believes~~ that
799 the health, safety, welfare, or rights of a ~~the~~ resident are in
800 imminent danger, the representative of the State Long-Term Care
801 Ombudsman Program must immediately ~~the chair shall~~ notify the
802 district manager and local council chair. ~~ombudsman or legal~~
803 ~~advocate, who,~~ The district manager or local council chair,
804 after verifying that such imminent danger exists, must notify
805 the appropriate state agencies, including law enforcement
806 agencies, the state ombudsman, and the legal advocate to ensure
807 the protection of ~~shall seek immediate legal or administrative~~
808 ~~remedies to protect~~ the resident.

809 (c) If the state ombudsman or legal advocate has reason to
810 believe that the long-term care facility or an employee of the



906328

576-02161-15

811 facility has committed a criminal act, the state ombudsman or
812 legal advocate shall provide the local law enforcement agency
813 with the relevant information to initiate an investigation of
814 the case.

815 (2)~~(a)~~ Upon referral from a district or local council, the
816 state ombudsman or his or her designee ~~council~~ shall assume the
817 responsibility for the disposition of the complaint. If a long-
818 term care facility fails to take action to resolve or remedy the
819 ~~on a complaint by the state council~~, the state ombudsman ~~council~~
820 may, ~~after obtaining approval from the ombudsman and a majority~~
821 ~~of the state council members~~:

822 (a)~~1~~. In accordance with s. 400.0077, publicize the
823 complaint, the recommendations of the local or state council,
824 and the response of the long-term care facility.

825 (b)~~2~~. Recommend to the department and the agency a series
826 of facility reviews pursuant to s. 400.19, s. 429.34, or s.
827 429.67 to ensure correction and nonrecurrence of the conditions
828 that gave ~~give~~ rise to the complaint ~~complaints~~ against the a
829 long-term care facility.

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

833 (d)~~4~~. Recommend to the department and the agency that
834 procedures be initiated for action against ~~revocation of~~ the
835 long-term care facility's license in accordance with chapter
836 120.

837 ~~(b) If the state council chair believes that the health,~~
838 ~~safety, welfare, or rights of the resident are in imminent~~
839 ~~danger, the chair shall notify the ombudsman or legal advocate,~~



906328

576-02161-15

840 ~~who, after verifying that such imminent danger exists, shall~~
841 ~~seek immediate legal or administrative remedies to protect the~~
842 ~~resident.~~

843 (3)(e) If the state ombudsman, after consultation with the
844 legal advocate, has reason to believe that the long-term care
845 facility or an employee of the facility has committed a criminal
846 act, the state ombudsman shall provide the local law enforcement
847 agency with the relevant information to initiate an
848 investigation of the case.

849 Section 12. Section 400.0078, Florida Statutes, is amended
850 to read:

851 400.0078 Citizen access to State Long-Term Care Ombudsman
852 Program services.—

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

857 (2) ~~Every resident or representative of a resident shall~~
858 ~~receive,~~ Upon admission to a long-term care facility, each
859 resident or representative of a resident must receive
860 information regarding:

861 (a) The purpose of the State Long-Term Care Ombudsman
862 Program;

863 (b) The statewide toll-free telephone number and e-mail
864 address for receiving complaints; ~~and~~

865 (c) Information that retaliatory action cannot be taken
866 against a resident for presenting grievances or for exercising
867 any other resident rights.

868 (d) Other relevant information regarding how to contact



906328

576-02161-15

869 representatives of the State Long Term Care Ombudsman Program
870 ~~the program.~~

871
872 Residents or their representatives must be furnished additional
873 copies of this information upon request.

874 Section 13. Section 400.0079, Florida Statutes, is amended
875 to read:

876 400.0079 Immunity.—

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

881 (2) Representatives of the State Long-Term Care Ombudsman
882 Program are ~~The ombudsman or any person authorized by the~~
883 ~~ombudsman to act on behalf of the office, as well as all members~~
884 ~~of the state and local councils, shall be~~ immune from any
885 liability, civil or criminal, that otherwise might be incurred
886 or imposed during the good faith performance of official duties.

887 Section 14. Section 400.0081, Florida Statutes, is amended
888 to read:

889 400.0081 Access to facilities, residents, and records.—

890 (1) A long-term care facility shall provide representatives
891 of the State Long-Term Care Program with ~~the office, the state~~
892 ~~council and its members, and the local councils and their~~
893 ~~members~~ access to:

894 (a) ~~Any portion of~~ The long-term care facility and its
895 residents ~~any resident as necessary to investigate or resolve a~~
896 ~~complaint.~~

897 (b) Where appropriate, medical and social records of a



906328

576-02161-15

898 resident for review ~~as necessary to investigate or resolve a~~
899 ~~complaint~~, if:

900 1. The representative of the State Long-Term Care Ombudsman
901 Program office has the permission of the resident or the legal
902 representative of the resident; or

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

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

907 1. A legal representative or guardian of the resident
908 refuses to give permission;

909 2. The representative of the State Long-Term Care Ombudsman
910 Program office has reasonable cause to believe that the legal
911 representative or guardian is not acting in the best interests
912 of the resident; and

913 3. The representative of the State Long-Term Care Ombudsman
914 Program ~~state or local council member~~ obtains the approval of
915 the state ombudsman.

916 (d) Access to ~~The~~ administrative records, policies, and
917 documents to which residents or the general public have access.

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

921 (2) The department, in consultation with the state
922 ombudsman ~~and the state council~~, may adopt rules to establish
923 procedures to ensure access to facilities, residents, and
924 records as described in this section.

925 Section 15. Section 400.0083, Florida Statutes, is amended
926 to read:



906328

576-02161-15

927 400.0083 Interference; retaliation; penalties.-

928 (1) A ~~It shall be unlawful for any~~ person, long-term care
929 facility, or other entity may not ~~to~~ willfully interfere with a
930 representative of the State Long-Term Care Ombudsman Program
931 ~~office, the state council, or a local council~~ in the performance
932 of official duties.

933 (2) A ~~It shall be unlawful for any~~ person, long-term care
934 facility, or other entity may not ~~to~~ knowingly or willfully take
935 action or retaliate against any resident, employee, or other
936 person for filing a complaint with, providing information to, or
937 otherwise cooperating with any representative of the State Long
938 Term-Care Ombudsman Program ~~office, the state council, or a~~
939 ~~local council~~.

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

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

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

946 Section 16. Section 400.0087, Florida Statutes, is amended
947 to read:

948 400.0087 Department oversight; funding.-

949 (1) The department shall meet the costs associated with the
950 State Long-Term Care Ombudsman Program from funds appropriated
951 to it.

952 (a) The department shall include the costs associated with
953 support of the State Long-Term Care Ombudsman Program when
954 developing its budget requests for consideration by the Governor
955 and submittal to the Legislature.



906328

576-02161-15

956 (b) The department may divert from the federal ombudsman
957 appropriation an amount equal to the department's administrative
958 cost ratio to cover the costs associated with administering the
959 State Long-Term Care Ombudsman Program. The remaining allotment
960 from the Older Americans Act program shall be expended on direct
961 ombudsman activities.

962 (2) The department shall monitor the State Long-Term Care
963 Ombudsman Program ~~office~~, the state council, and the local
964 councils to ensure that each is carrying out the duties
965 delegated to it by state and federal law.

966 (3) The department is responsible for ensuring that the
967 State Long-Term Care Ombudsman Program ~~office~~:

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

970 (b) Provides information to public and private agencies,
971 legislators, and others.

972 (c) Provides appropriate training to representatives of the
973 State Long-Term Care Ombudsman Office ~~or of the state or local~~
974 ~~councils~~.

975 (d) Coordinates ombudsman services with Disability Rights
976 Florida, the Advocacy Center for Persons with Disabilities and
977 with providers of legal services to residents of long-term care
978 facilities in compliance with state and federal laws.

979 (4) The department shall also:

980 (a) Receive and disburse state and federal funds for
981 purposes that the state ombudsman has formulated in accordance
982 with the Older Americans Act.

983 (b) Whenever necessary, act as liaison between agencies and
984 branches of the federal and state governments and the State



906328

576-02161-15

985 Long-Term Care Ombudsman Program.

986 Section 17. Section 400.0089, Florida Statutes, is amended
987 to read:

988 400.0089 Complaint data reports.—The State Long-Term Care
989 Ombudsman Program ~~office~~ shall maintain a statewide uniform
990 reporting system to collect and analyze data relating to
991 complaints and conditions in long-term care facilities and to
992 residents for the purpose of identifying and resolving
993 complaints significant problems. ~~The office shall publish~~
994 ~~quarterly and make readily available~~ Information pertaining to
995 the number and types of complaints received by the State Long-
996 Term Care Ombudsman Program shall be published quarterly and
997 made readily available and shall include such information in the
998 annual report required under s. 400.0065.

999 Section 18. Section 400.0091, Florida Statutes, is amended
1000 to read:

1001 400.0091 Training.—The state ombudsman shall ensure that
1002 appropriate training is provided to all representatives of the
1003 State Long-Term Care Ombudsman Program ~~employees of the office~~
1004 ~~and to the members of the state and local councils~~.

1005 (1) All representatives of the State Long-Term Care
1006 Ombudsman Program ~~state and local council members and employees~~
1007 ~~of the office~~ shall be given a minimum of 20 hours of training
1008 upon employment with the State Long-Term Care Ombudsman Program
1009 ~~office~~ or appointment as an ombudsman. ~~Ten approval as a state~~
1010 ~~or local council member and 10~~ hours of training in the form of
1011 continuing education is required annually thereafter.

1012 (2) The state ombudsman shall approve the curriculum for
1013 the initial and continuing education training, which must, at a



906328

576-02161-15

1014 minimum, address:

1015 (a) Resident confidentiality.

1016 (b) Guardianships and powers of attorney.

1017 (c) Medication administration.

1018 (d) Care and medication of residents with dementia and

1019 Alzheimer's disease.

1020 (e) Accounting for residents' funds.

1021 (f) Discharge rights and responsibilities.

1022 (g) Cultural sensitivity.

1023 (h) Any other topic related to residency in a long-term

1024 care facility recommended by the secretary.

1025 (3) An individual ~~No employee, officer, or representative~~

1026 ~~of the office or of the state or local councils,~~ other than the

1027 state ombudsman, may not hold himself or herself out as a

1028 representative of the State Long-Term Care Ombudsman Program or

1029 conduct any authorized program duty described in this part

1030 unless the individual ~~person~~ has received the training required

1031 by this section and has been certified by the state ombudsman as

1032 qualified to carry out ombudsman activities on behalf of the

1033 office or the state or local councils.

1034 Section 19. Subsection (4) of section 20.41, Florida

1035 Statutes, is amended to read:

1036 20.41 Department of Elderly Affairs.—There is created a

1037 Department of Elderly Affairs.

1038 (4) The department shall administer the State Long-Term

1039 Care Ombudsman Program ~~Council,~~ created by s. 400.0063 ~~400.0067,~~

1040 ~~and the local long-term care ombudsman councils, created by s.~~

1041 ~~400.0069~~ and shall, as required by s. 712 of the federal Older

1042 Americans Act of 1965, ensure that ~~both~~ the State Long Term Care



906328

576-02161-15

1043 Ombudsman Program operates state and local long term care
1044 ~~ombudsman councils operate~~ in compliance with the Older
1045 Americans Act.

1046 Section 20. Subsections (14) through (19) of section
1047 400.021, Florida Statutes, are amended to read:

1048 400.021 Definitions.—When used in this part, unless the
1049 context otherwise requires, the term:

1050 (14) "Office" has the same meaning as in s. 400.0060.

1051 (15)~~(14)~~ "Planning and service area" means the geographic
1052 area in which the Older Americans Act programs are administered
1053 and services are delivered by the Department of Elderly Affairs.

1054 (16) "Representative of the State Long Term Care Ombudsman
1055 Program" has the same meaning as in s. 400.0060.

1056 (17)~~(15)~~ "Respite care" means admission to a nursing home
1057 for the purpose of providing a short period of rest or relief or
1058 emergency alternative care for the primary caregiver of an
1059 individual receiving care at home who, without home-based care,
1060 would otherwise require institutional care.

1061 (18)~~(16)~~ "Resident care plan" means a written plan
1062 developed, maintained, and reviewed not less than quarterly by a
1063 registered nurse, with participation from other facility staff
1064 and the resident or his or her designee or legal representative,
1065 which includes a comprehensive assessment of the needs of an
1066 individual resident; the type and frequency of services required
1067 to provide the necessary care for the resident to attain or
1068 maintain the highest practicable physical, mental, and
1069 psychosocial well-being; a listing of services provided within
1070 or outside the facility to meet those needs; and an explanation
1071 of service goals.



906328

576-02161-15

1072 ~~(19)-(17)~~ "Resident designee" means a person, other than the
1073 owner, administrator, or employee of the facility, designated in
1074 writing by a resident or a resident's guardian, if the resident
1075 is adjudicated incompetent, to be the resident's representative
1076 for a specific, limited purpose.

1077 ~~(20)-(18)~~ "State Long Term Care Ombudsman Program ombudsman
1078 council" has the same meaning as in s. 400.0060 ~~means the State~~
1079 ~~Long Term Care Ombudsman Council established pursuant to s.~~
1080 ~~400.0067.~~

1081 ~~(21)-(19)~~ "Therapeutic spa services" means bathing, nail,
1082 and hair care services and other similar services related to
1083 personal hygiene.

1084 Section 21. Paragraph (c) of subsection (1) and subsections
1085 (2), and (3) of section 400.022, Florida Statutes, are amended
1086 to read:

1087 400.022 Residents' rights.—

1088 (1) All licensees of nursing home facilities shall adopt
1089 and make public a statement of the rights and responsibilities
1090 of the residents of such facilities and shall treat such
1091 residents in accordance with the provisions of that statement.
1092 The statement shall assure each resident the following:

1093 (c) Any entity or individual that provides health, social,
1094 legal, or other services to a resident has the right to have
1095 reasonable access to the resident. The resident has the right to
1096 deny or withdraw consent to access at any time by any entity or
1097 individual. Notwithstanding the visiting policy of the facility,
1098 the following individuals must be permitted immediate access to
1099 the resident:

1100 1. Any representative of the federal or state government,



906328

576-02161-15

1101 including, but not limited to, representatives of the Department
1102 of Children and Families, the Department of Health, the Agency
1103 for Health Care Administration, the Office of the Attorney
1104 General, and the Department of Elderly Affairs; any law
1105 enforcement officer; any representative of the State Long Term
1106 Care Ombudsman Program ~~members of the state or local ombudsman~~
1107 ~~council~~; and the resident's individual physician.

1108 2. Subject to the resident's right to deny or withdraw
1109 consent, immediate family or other relatives of the resident.

1110
1111 The facility must allow representatives of the State Long-Term
1112 Care Ombudsman Program Council to examine a resident's clinical
1113 records with the permission of the resident or the resident's
1114 legal representative and consistent with state law.

1115 (2) The licensee for each nursing home shall orally inform
1116 the resident of the resident's rights and provide a copy of the
1117 statement required by subsection (1) to each resident or the
1118 resident's legal representative at or before the resident's
1119 admission to a facility. The licensee shall provide a copy of
1120 the resident's rights to each staff member of the facility. Each
1121 such licensee shall prepare a written plan and provide
1122 appropriate staff training to implement the provisions of this
1123 section. The written statement of rights must include a
1124 statement that a resident may file a complaint with the agency
1125 or state or local ombudsman council. The statement must be in
1126 boldfaced type and ~~shall~~ include the ~~name, address, and~~
1127 telephone number and e-mail address of the State Long Term Care
1128 Ombudsman Program, the numbers of the local ombudsman council
1129 and the Elder Abuse Hotline operated by the Department of



906328

576-02161-15

1130 Children and Families ~~central abuse hotline where complaints may~~
1131 ~~be lodged.~~

1132 (3) Any violation of the resident's rights set forth in
1133 this section constitutes ~~shall constitute~~ grounds for action by
1134 the agency under ~~the provisions of~~ s. 400.102, s. 400.121, or
1135 part II of chapter 408. In order to determine whether the
1136 licensee is adequately protecting residents' rights, the
1137 licensure inspection of the facility must ~~shall~~ include private
1138 informal conversations with a sample of residents to discuss
1139 residents' experiences within the facility with respect to
1140 rights specified in this section and general compliance with
1141 standards, and consultation with the State Long-Term Care
1142 Ombudsman Program ~~ombudsman council in the local planning and~~
1143 ~~service area of the Department of Elderly Affairs in which the~~
1144 ~~nursing home is located.~~

1145 Section 22. Subsections (8), (9), and (11) through (14) of
1146 section 400.0255, Florida Statutes, are amended to read:

1147 400.0255 Resident transfer or discharge; requirements and
1148 procedures; hearings.-

1149 (8) The notice required by subsection (7) must be in
1150 writing and must contain all information required by state and
1151 federal law, rules, or regulations applicable to Medicaid or
1152 Medicare cases. The agency shall develop a standard document to
1153 be used by all facilities licensed under this part for purposes
1154 of notifying residents of a discharge or transfer. Such document
1155 must include a means for a resident to request the local long-
1156 term care ombudsman council to review the notice and request
1157 information about or assistance with initiating a fair hearing
1158 with the department's Office of Appeals Hearings. In addition to



906328

576-02161-15

1159 any other pertinent information included, the form shall specify
1160 the reason allowed under federal or state law that the resident
1161 is being discharged or transferred, with an explanation to
1162 support this action. Further, the form must ~~shall~~ state the
1163 effective date of the discharge or transfer and the location to
1164 which the resident is being discharged or transferred. The form
1165 must ~~shall~~ clearly describe the resident's appeal rights and the
1166 procedures for filing an appeal, including the right to request
1167 the local ombudsman council ~~to~~ review the notice of discharge or
1168 transfer. A copy of the notice must be placed in the resident's
1169 clinical record, and a copy must be transmitted to the
1170 resident's legal guardian or representative and to the local
1171 ombudsman council within 5 business days after signature by the
1172 resident or resident designee.

1173 (9) A resident may request that the State Long-Term Care
1174 Ombudsman Program or local ombudsman council review any notice
1175 of discharge or transfer given to the resident. When requested
1176 by a resident to review a notice of discharge or transfer, the
1177 local ombudsman council shall do so within 7 days after receipt
1178 of the request. The nursing home administrator, or the
1179 administrator's designee, must forward the request for review
1180 contained in the notice to the State Long-Term Care Ombudsman
1181 Program or local ombudsman council within 24 hours after such
1182 request is submitted. Failure to forward the request within 24
1183 hours after the request is submitted shall toll the running of
1184 the 30-day advance notice period until the request has been
1185 forwarded.

1186 (11) Notwithstanding paragraph (10) (b), an emergency
1187 discharge or transfer may be implemented as necessary pursuant



906328

576-02161-15

1188 to state or federal law during the ~~period~~ of time after the
1189 notice is given and before the time a hearing decision is
1190 rendered. Notice of an emergency discharge or transfer to the
1191 resident, the resident's legal guardian or representative, and
1192 the State Long-Term Care Ombudsman Program or the local
1193 ombudsman council if requested pursuant to subsection (9) must
1194 be by telephone or in person. This notice shall be given before
1195 the transfer, if possible, or as soon thereafter as practicable.
1196 The State Long-Term Care Ombudsman Program or a local
1197 ombudsman council conducting a review under this subsection
1198 shall do so within 24 hours after receipt of the request. The
1199 resident's file must be documented to show who was contacted,
1200 whether the contact was by telephone or in person, and the date
1201 and time of the contact. If the notice is not given in writing,
1202 written notice meeting the requirements of subsection (8) must
1203 be given the next working day.

1204 (12) After receipt of any notice required under this
1205 section, the State Long-Term Care Ombudsman Program or local
1206 ombudsman council may request a private informal conversation
1207 with a resident to whom the notice is directed, and, if known, a
1208 family member or the resident's legal guardian or designee, to
1209 ensure that the facility is proceeding with the discharge or
1210 transfer in accordance with ~~the requirements of~~ this section. If
1211 requested, the State Long-Term Care Ombudsman Program or the
1212 local ombudsman council shall assist the resident with filing an
1213 appeal of the proposed discharge or transfer.

1214 (13) The following persons must be present at all hearings
1215 authorized under this section:

1216 (a) The resident, or the resident's legal representative or



906328

576-02161-15

1217 designee.

1218 (b) The facility administrator, or the facility's legal
1219 representative or designee.

1220

1221 A representative of the State Long-Term Care Ombudsman Program
1222 or the local long-term care ombudsman council may be present at
1223 all hearings authorized by this section.

1224 (14) In any hearing under this section, the following
1225 information concerning the parties shall be confidential and
1226 exempt from ~~the provisions of~~ s. 119.07(1):

1227 (a) Names and addresses.

1228 (b) Medical services provided.

1229 (c) Social and economic conditions or circumstances.

1230 (d) Evaluation of personal information.

1231 (e) Medical data, including diagnosis and past history of
1232 disease or disability.

1233 (f) Any information received verifying income eligibility
1234 and amount of medical assistance payments. Income information
1235 received from the Social Security Administration or the Internal
1236 Revenue Service must be safeguarded according to the
1237 requirements of the agency that furnished the data.

1238

1239 The exemption created by this subsection does not prohibit
1240 access to such information by the State Long-Term Care Ombudsman
1241 Program or a local long-term care ombudsman council upon
1242 request, by a reviewing court if such information is required to
1243 be part of the record upon subsequent review, or as specified in
1244 s. 24(a), Art. I of the State Constitution.

1245 Section 23. Paragraph (d) of subsection (5) of section



906328

576-02161-15

1246 400.162, Florida Statutes, is amended to read:

1247 400.162 Property and personal affairs of residents.—

1248 (5)

1249 (d) If, at any time during the period for which a license
1250 is issued, a licensee that has not purchased a surety bond or
1251 entered into a self-insurance agreement, as provided in
1252 paragraphs (b) and (c), is requested to provide safekeeping for
1253 the personal funds of a resident, the licensee shall notify the
1254 agency of the request and make application for a surety bond or
1255 for participation in a self-insurance agreement within 7 days
1256 after ~~of~~ the request, exclusive of weekends and holidays. Copies
1257 of the application, along with written documentation of related
1258 correspondence with an insurance agency or group, shall be
1259 maintained by the licensee for review by the agency and the
1260 State ~~Nursing Home and Long-Term Care Facility~~ Ombudsman Program
1261 Council.

1262 Section 24. Subsections (1) and (4) of section 400.19,
1263 Florida Statutes, are amended to read:

1264 400.19 Right of entry and inspection.—

1265 (1) In accordance with part II of chapter 408, the agency
1266 and any of its ~~duly~~ designated officers ~~officer~~ or employees
1267 ~~employee thereof~~ or a representative of ~~member of~~ the State
1268 Long-Term Care Ombudsman Program Council or the local long-term
1269 care ombudsman council shall have the right to enter upon and
1270 into the premises of any facility licensed pursuant to this
1271 part, or any distinct nursing home unit of a hospital licensed
1272 under chapter 395 or any freestanding facility licensed under
1273 chapter 395 which ~~that~~ provides extended care or other long-term
1274 care services, at any reasonable time in order to determine the



906328

576-02161-15

1275 state of compliance with ~~the provisions of~~ this part, part II of
1276 chapter 408, and applicable rules in force pursuant thereto. The
1277 agency shall, within 60 days after receipt of a complaint made
1278 by a resident or resident's representative, complete its
1279 investigation and provide to the complainant its findings and
1280 resolution.

1281 (4) The agency shall conduct unannounced onsite facility
1282 reviews following written verification of licensee noncompliance
1283 in instances in which a representative of the State Long-Term
1284 Care Ombudsman Program or long-term care ombudsman council,
1285 pursuant to ss. 400.0071 and 400.0075, has received a complaint
1286 and has documented deficiencies in resident care or in the
1287 physical plant of the facility that threaten the health, safety,
1288 or security of residents, or when the agency documents through
1289 inspection that conditions in a facility present a direct or
1290 indirect threat to the health, safety, or security of residents.
1291 However, the agency shall conduct unannounced onsite reviews
1292 every 3 months of each facility while the facility has a
1293 conditional license. Deficiencies related to physical plant do
1294 not require followup reviews after the agency has determined
1295 that correction of the deficiency has been accomplished and that
1296 the correction is of the nature that continued compliance can be
1297 reasonably expected.

1298 Section 25. Subsection (6) and paragraph (c) of subsection
1299 (7) of section 400.23, Florida Statutes, are amended to read:

1300 400.23 Rules; evaluation and deficiencies; licensure
1301 status.—

1302 (6) Before ~~Prior to~~ conducting a survey of the facility,
1303 the survey team shall obtain a copy of the local long-term care



906328

576-02161-15

1304 ombudsman council report on the facility. Problems noted in the
1305 report shall be incorporated into and followed up through the
1306 agency's inspection process. This procedure does not preclude
1307 the State Long-Term Care Ombudsman Program or local long-term
1308 care ombudsman council from requesting the agency to conduct a
1309 followup visit to the facility.

1310 (7) The agency shall, at least every 15 months, evaluate
1311 all nursing home facilities and make a determination as to the
1312 degree of compliance by each licensee with the established rules
1313 adopted under this part as a basis for assigning a licensure
1314 status to that facility. The agency shall base its evaluation on
1315 the most recent inspection report, taking into consideration
1316 findings from other official reports, surveys, interviews,
1317 investigations, and inspections. In addition to license
1318 categories authorized under part II of chapter 408, the agency
1319 shall assign a licensure status of standard or conditional to
1320 each nursing home.

1321 (c) In evaluating the overall quality of care and services
1322 and determining whether the facility will receive a conditional
1323 or standard license, the agency shall consider the needs and
1324 limitations of residents in the facility and the results of
1325 interviews and surveys of a representative sampling of
1326 residents, families of residents, representatives of the State
1327 Long-Term Care Ombudsman Program ~~ombudsman council members in~~
1328 ~~the planning and service area in which the facility is located,~~
1329 guardians of residents, and staff of the nursing home facility.

1330 Section 26. Paragraph (a) of subsection (3), paragraph (f)
1331 of subsection (5), and subsection (6) of section 400.235,
1332 Florida Statutes, is amended to read:



906328

576-02161-15

1333 400.235 Nursing home quality and licensure status; Gold
1334 Seal Program.—

1335 (3) (a) The Gold Seal Program shall be developed and
1336 implemented by the Governor's Panel on Excellence in Long-Term
1337 Care which shall operate under the authority of the Executive
1338 Office of the Governor. The panel shall be composed of three
1339 persons appointed by the Governor, to include a consumer
1340 advocate for senior citizens and two persons with expertise in
1341 the fields of quality management, service delivery excellence,
1342 or public sector accountability; three persons appointed by the
1343 Secretary of Elderly Affairs, to include an active member of a
1344 nursing facility family and resident care council and a member
1345 of the University Consortium on Aging; a representative of the
1346 State Long-Term Care Ombudsman Program; one person appointed by
1347 the Florida Life Care Residents Association; one person
1348 appointed by the State Surgeon General; two persons appointed by
1349 the Secretary of Health Care Administration; one person
1350 appointed by the Florida Association of Homes for the Aging; and
1351 one person appointed by the Florida Health Care Association.
1352 Vacancies on the panel shall be filled in the same manner as the
1353 original appointments.

1354 (5) Facilities must meet the following additional criteria
1355 for recognition as a Gold Seal Program facility:

1356 (f) Evidence that verified an outstanding record regarding
1357 ~~the number and types of substantiated~~ complaints reported to the
1358 State Long-Term Care Ombudsman Program Council within the 30
1359 months preceding application for the program.

1360
1361 A facility assigned a conditional licensure status may not



906328

576-02161-15

1362 qualify for consideration for the Gold Seal Program until after
1363 it has operated for 30 months with no class I or class II
1364 deficiencies and has completed a regularly scheduled relicensure
1365 survey.

1366 (6) The agency, nursing facility industry organizations,
1367 consumers, State Long-Term Care Ombudsman Program Council, and
1368 members of the community may recommend to the Governor
1369 facilities that meet the established criteria for consideration
1370 for and award of the Gold Seal. The panel shall review nominees
1371 and make a recommendation to the Governor for final approval and
1372 award. The decision of the Governor is final and is not subject
1373 to appeal.

1374 Section 27. Subsections (18) through (28) of section
1375 415.102, Florida Statutes, are redesignated as subsections (19)
1376 through and (29), respectively, and a new subsection (18) is
1377 added to that section, to read:

1378 415.102 Definitions of terms used in ss. 415.101-415.113.-
1379 As used in ss. 415.101-415.113, the term:

1380 (18) "Office" has the same meaning as in s. 400.0060.

1381 Section 28. Paragraph (a) of subsection (1) of section
1382 415.1034, Florida Statutes, is amended to read:

1383 415.1034 Mandatory reporting of abuse, neglect, or
1384 exploitation of vulnerable adults; mandatory reports of death.-

1385 (1) MANDATORY REPORTING.-

1386 (a) Any person, including, but not limited to, any:

1387 1. Physician, osteopathic physician, medical examiner,
1388 chiropractic physician, nurse, paramedic, emergency medical
1389 technician, or hospital personnel engaged in the admission,
1390 examination, care, or treatment of vulnerable adults;



906328

576-02161-15

1391 2. Health professional or mental health professional other
1392 than one listed in subparagraph 1.;

1393 3. Practitioner who relies solely on spiritual means for
1394 healing;

1395 4. Nursing home staff; assisted living facility staff;
1396 adult day care center staff; adult family-care home staff;
1397 social worker; or other professional adult care, residential, or
1398 institutional staff;

1399 5. State, county, or municipal criminal justice employee or
1400 law enforcement officer;

1401 6. ~~An~~ Employee of the Department of Business and
1402 Professional Regulation conducting inspections of public lodging
1403 establishments under s. 509.032;

1404 7. Florida advocacy council or Disability Rights Florida
1405 member or a representative of the State Long-Term Care Ombudsman
1406 Program ~~long-term care ombudsman council member~~; or

1407 8. Bank, savings and loan, or credit union officer,
1408 trustee, or employee,

1409
1410 who knows, or has reasonable cause to suspect, that a vulnerable
1411 adult has been or is being abused, neglected, or exploited shall
1412 immediately report such knowledge or suspicion to the central
1413 abuse hotline.

1414 Section 29. Subsection (1) of section 415.104, Florida
1415 Statutes, is amended to read:

1416 415.104 Protective investigations of cases of abuse,
1417 neglect, or exploitation of vulnerable adults; transmittal of
1418 records to state attorney.—

1419 (1) The department shall, upon receipt of a report alleging



906328

576-02161-15

1420 abuse, neglect, or exploitation of a vulnerable adult, begin
1421 within 24 hours a protective investigation of the facts alleged
1422 therein. If a caregiver refuses to allow the department to begin
1423 a protective investigation or interferes with the conduct of
1424 such an investigation, the appropriate law enforcement agency
1425 shall be contacted for assistance. If, during the course of the
1426 investigation, the department has reason to believe that the
1427 abuse, neglect, or exploitation is perpetrated by a second
1428 party, the appropriate law enforcement agency and state attorney
1429 shall be orally notified. The department and the law enforcement
1430 agency shall cooperate to allow the criminal investigation to
1431 proceed concurrently with, and not be hindered by, the
1432 protective investigation. The department shall make a
1433 preliminary written report to the law enforcement agencies
1434 within 5 working days after the oral report. The department
1435 shall, within 24 hours after receipt of the report, notify the
1436 appropriate Florida local advocacy council, or the State Long-
1437 Term Care Ombudsman Program ~~long-term care ombudsman council~~,
1438 when appropriate, that an alleged abuse, neglect, or
1439 exploitation perpetrated by a second party has occurred. Notice
1440 to the Florida local advocacy council or the State Long-Term
1441 Care Ombudsman Program ~~long-term care ombudsman council~~ may be
1442 accomplished orally or in writing and shall include the name and
1443 location of the vulnerable adult alleged to have been abused,
1444 neglected, or exploited and the nature of the report.

1445 Section 30. Subsection (8) of section 415.1055, Florida
1446 Statutes, is amended to read:

1447 415.1055 Notification to administrative entities.—

1448 (8) At the conclusion of a protective investigation at a



906328

576-02161-15

1449 facility, the department shall notify either the Florida local
1450 advocacy council or the State Long-Term Care Ombudsman Program
1451 or the long-term care ombudsman council of the results of the
1452 investigation. This notification must be in writing.

1453 Section 31. Subsection (2) of section 415.106, Florida
1454 Statutes, is amended to read:

1455 415.106 Cooperation by the department and criminal justice
1456 and other agencies.—

1457 (2) To ensure coordination, communication, and cooperation
1458 with the investigation of abuse, neglect, or exploitation of
1459 vulnerable adults, the department shall develop and maintain
1460 interprogram agreements or operational procedures among
1461 appropriate departmental programs and the State Long-Term Care
1462 Ombudsman Program Council, the Florida Statewide Advocacy
1463 Council, and other agencies that provide services to vulnerable
1464 adults. These agreements or procedures must cover such subjects
1465 as the appropriate roles and responsibilities of the department
1466 in identifying and responding to reports of abuse, neglect, or
1467 exploitation of vulnerable adults; the provision of services;
1468 and related coordinated activities.

1469 Section 32. Paragraph (g) of subsection (3) of section
1470 415.107, Florida Statutes, is amended to read:

1471 415.107 Confidentiality of reports and records.—

1472 (3) Access to all records, excluding the name of the
1473 reporter which shall be released only as provided in subsection
1474 (6), shall be granted only to the following persons, officials,
1475 and agencies:

1476 (g) Any appropriate official of the Florida advocacy
1477 council, State Long-Term Care Ombudsman Program or long-term



906328

576-02161-15

1478 care ombudsman council investigating a report of known or
1479 suspected abuse, neglect, or exploitation of a vulnerable adult.

1480 Section 33. Present subsections (16) through (26) of
1481 section 429.02, Florida Statutes, are redesignated as
1482 subsections (17) through (27), respectively, present subsections
1483 (11) and (20) are amended, and a new subsection (16) is added to
1484 that section to read:

1485 429.02 Definitions.—When used in this part, the term:

1486 (11) "Extended congregate care" means acts beyond those
1487 authorized in subsection (17) ~~(16)~~ that may be performed
1488 pursuant to part I of chapter 464 by persons licensed thereunder
1489 while carrying out their professional duties, and other
1490 supportive services which may be specified by rule. The purpose
1491 of such services is to enable residents to age in place in a
1492 residential environment despite mental or physical limitations
1493 that might otherwise disqualify them from residency in a
1494 facility licensed under this part.

1495 (16) "Office" has the same meaning as in s. 400.0060.

1496 (17) ~~(16)~~ "Personal services" means direct physical
1497 assistance with or supervision of the activities of daily living
1498 and the self-administration of medication and other similar
1499 services which the department may define by rule. "Personal
1500 services" shall not be construed to mean the provision of
1501 medical, nursing, dental, or mental health services.

1502 (18) ~~(17)~~ "Physical restraint" means a device which
1503 physically limits, restricts, or deprives an individual of
1504 movement or mobility, including, but not limited to, a half-bed
1505 rail, a full-bed rail, a geriatric chair, and a posey restraint.
1506 The term "physical restraint" shall also include any device



906328

576-02161-15

1507 which was not specifically manufactured as a restraint but which
1508 has been altered, arranged, or otherwise used for this purpose.
1509 The term shall not include bandage material used for the purpose
1510 of binding a wound or injury.

1511 ~~(19)~~ ~~(18)~~ "Relative" means an individual who is the father,
1512 mother, stepfather, stepmother, son, daughter, brother, sister,
1513 grandmother, grandfather, great-grandmother, great-grandfather,
1514 grandson, granddaughter, uncle, aunt, first cousin, nephew,
1515 niece, husband, wife, father-in-law, mother-in-law, son-in-law,
1516 daughter-in-law, brother-in-law, sister-in-law, stepson,
1517 stepdaughter, stepbrother, stepsister, half brother, or half
1518 sister of an owner or administrator.

1519 ~~(20)~~ ~~(19)~~ "Resident" means a person 18 years of age or
1520 older, residing in and receiving care from a facility.

1521 ~~(21)~~ ~~(20)~~ "Resident's representative or designee" means a
1522 person other than the owner, or an agent or employee of the
1523 facility, designated in writing by the resident, if legally
1524 competent, to receive notice of changes in the contract executed
1525 pursuant to s. 429.24; to receive notice of and to participate
1526 in meetings between the resident and the facility owner,
1527 administrator, or staff concerning the rights of the resident;
1528 to assist the resident in contacting the State Long-Term Care
1529 Ombudsman Program or local ombudsman council if the resident has
1530 a complaint against the facility; or to bring legal action on
1531 behalf of the resident pursuant to s. 429.29.

1532 ~~(22)~~ ~~(21)~~ "Service plan" means a written plan, developed and
1533 agreed upon by the resident and, if applicable, the resident's
1534 representative or designee or the resident's surrogate,
1535 guardian, or attorney in fact, if any, and the administrator or



906328

576-02161-15

1536 designee representing the facility, which addresses the unique
1537 physical and psychosocial needs, abilities, and personal
1538 preferences of each resident receiving extended congregate care
1539 services. The plan shall include a brief written description, in
1540 easily understood language, of what services shall be provided,
1541 who shall provide the services, when the services shall be
1542 rendered, and the purposes and benefits of the services.

1543 ~~(23)~~(22) "Shared responsibility" means exploring the
1544 options available to a resident within a facility and the risks
1545 involved with each option when making decisions pertaining to
1546 the resident's abilities, preferences, and service needs,
1547 thereby enabling the resident and, if applicable, the resident's
1548 representative or designee, or the resident's surrogate,
1549 guardian, or attorney in fact, and the facility to develop a
1550 service plan which best meets the resident's needs and seeks to
1551 improve the resident's quality of life.

1552 ~~(24)~~(23) "Supervision" means reminding residents to engage
1553 in activities of daily living and the self-administration of
1554 medication, and, when necessary, observing or providing verbal
1555 cuing to residents while they perform these activities.

1556 ~~(25)~~(24) "Supplemental security income," Title XVI of the
1557 Social Security Act, means a program through which the Federal
1558 Government guarantees a minimum monthly income to every person
1559 who is age 65 or older, or disabled, or blind and meets the
1560 income and asset requirements.

1561 ~~(26)~~(25) "Supportive services" means services designed to
1562 encourage and assist aged persons or adults with disabilities to
1563 remain in the least restrictive living environment and to
1564 maintain their independence as long as possible.



906328

576-02161-15

1565 ~~(27)~~(26) "Twenty-four-hour nursing supervision" means
1566 services that are ordered by a physician for a resident whose
1567 condition requires the supervision of a physician and continued
1568 monitoring of vital signs and physical status. Such services
1569 shall be: medically complex enough to require constant
1570 supervision, assessment, planning, or intervention by a nurse;
1571 required to be performed by or under the direct supervision of
1572 licensed nursing personnel or other professional personnel for
1573 safe and effective performance; required on a daily basis; and
1574 consistent with the nature and severity of the resident's
1575 condition or the disease state or stage.

1576 Section 34. Subsection (9) of section 429.19, Florida
1577 Statutes, is amended to read:

1578 429.19 Violations; imposition of administrative fines;
1579 grounds.—

1580 (9) The agency shall develop and disseminate an annual list
1581 of all facilities sanctioned or fined for violations of state
1582 standards, the number and class of violations involved, the
1583 penalties imposed, and the current status of cases. The list
1584 shall be disseminated, at no charge, to the Department of
1585 Elderly Affairs, the Department of Health, the Department of
1586 Children and Families, the Agency for Persons with Disabilities,
1587 the area agencies on aging, the Florida Statewide Advocacy
1588 Council, ~~and~~ the State Long-Term Care Ombudsman Program and
1589 state and local ombudsman councils. The Department of Children
1590 and Families shall disseminate the list to service providers
1591 under contract to the department who are responsible for
1592 referring persons to a facility for residency. The agency may
1593 charge a fee commensurate with the cost of printing and postage



906328

576-02161-15

1594 to other interested parties requesting a copy of this list. This
1595 information may be provided electronically or through the
1596 agency's Internet site.

1597 Section 35. Subsection (8) of section 429.26, Florida
1598 Statutes, is amended to read:

1599 429.26 Appropriateness of placements; examinations of
1600 residents.-

1601 (8) The Department of Children and Families may require an
1602 examination for supplemental security income and optional state
1603 supplementation recipients residing in facilities at any time
1604 and shall provide the examination whenever a resident's
1605 condition requires it. Any facility administrator; personnel of
1606 the agency, the department, or the Department of Children and
1607 Families; or a representative of the State Long-Term Care
1608 Ombudsman Program ~~long-term care ombudsman council member~~ who
1609 believes a resident needs to be evaluated shall notify the
1610 resident's case manager, who shall take appropriate action. A
1611 report of the examination findings shall be provided to the
1612 resident's case manager and the facility administrator to help
1613 the administrator meet his or her responsibilities under
1614 subsection (1).

1615 Section 36. Subsection (2) and paragraph (b) of subsection
1616 (3) of section 429.28, Florida Statutes, are amended to read:

1617 429.28 Resident bill of rights.-

1618 (2) The administrator of a facility shall ensure that a
1619 written notice of the rights, obligations, and prohibitions set
1620 forth in this part is posted in a prominent place in each
1621 facility and read or explained to residents who cannot read.
1622 This notice must ~~shall~~ include the statewide toll-free telephone



906328

576-02161-15

1623 number and e-mail address of the State Long-Term Care Ombudsman
1624 Program and the telephone number of ~~name, address, and telephone~~
1625 ~~numbers~~ of the local ombudsman council and the Elder Abuse
1626 Hotline operated by the Department of Children and Families
1627 ~~central abuse hotline~~ and, when applicable, the Advocacy Center
1628 for Persons with Disabilities, Inc., and the Florida local
1629 advocacy council, where complaints may be lodged. The facility
1630 must ensure a resident's access to a telephone to call the State
1631 Long Term Care Ombudsman Program or local ombudsman council, the
1632 Elder Abuse Hotline operated by the Department of Children and
1633 Families ~~central abuse hotline~~, Advocacy Center for Persons with
1634 Disabilities, Inc., and the Florida local advocacy council.

1635 (3)

1636 (b) In order to determine whether the facility is
1637 adequately protecting residents' rights, the biennial survey
1638 shall include private informal conversations with a sample of
1639 residents and consultation with the ombudsman council in the
1640 district ~~planning and service area~~ in which the facility is
1641 located to discuss residents' experiences within the facility.

1642 Section 37. Section 429.34, Florida Statutes, is amended to
1643 read:

1644 429.34 Right of entry and inspection.—In addition to the
1645 requirements of s. 408.811, a ~~any~~ duly designated officer or
1646 employee of the department, the Department of Children and
1647 Families, the Medicaid Fraud Control Unit of the Office of the
1648 Attorney General, the state or local fire marshal, or a
1649 representative of the State Long-Term Care Ombudsman Program or
1650 a member of the state or local long-term care ombudsman council
1651 may ~~shall have the right to~~ enter unannounced upon and into the



906328

576-02161-15

1652 premises of any facility licensed under ~~pursuant to~~ this part in
1653 order to determine the state of compliance with ~~the provisions~~
1654 ~~of~~ this part, part II of chapter 408, and applicable rules. Data
1655 collected by the State Long-Term Care Ombudsman Program, ~~state~~
1656 ~~or~~ local long-term care ombudsman councils or the state or local
1657 advocacy councils may be used by the agency in investigations
1658 involving violations of regulatory standards.

1659 Section 38. Subsection (2) of section 429.35, Florida
1660 Statutes, is amended to read:

1661 429.35 Maintenance of records; reports.—

1662 (2) Within 60 days after the date of the biennial
1663 inspection visit required under s. 408.811 or within 30 days
1664 after the date of any interim visit, the agency shall forward
1665 the results of the inspection to the local ombudsman council in
1666 in the district ~~whose planning and service area, as defined in~~
1667 ~~part II of chapter 400,~~ where the facility is located; to at
1668 least one public library or, in the absence of a public library,
1669 the county seat in the county in which the inspected assisted
1670 living facility is located; and, when appropriate, to the
1671 district Adult Services and Mental Health Program Offices.

1672 Section 39. Subsection (6) of section 429.67, Florida
1673 Statutes, is amended to read:

1674 429.67 Licensure.—

1675 (6) In addition to the requirements of s. 408.811, access
1676 to a licensed adult family-care home must be provided at
1677 reasonable times for the appropriate officials of the
1678 department, the Department of Health, the Department of Children
1679 and Families, the agency, and the State Fire Marshal, who are
1680 responsible for the development and maintenance of fire, health,



906328

576-02161-15

1681 sanitary, and safety standards, to inspect the facility to
1682 assure compliance with these standards. In addition, access to a
1683 licensed adult family-care home must be provided at reasonable
1684 times to representatives of the State Long Term Care Ombudsman
1685 Program for the local long-term care ombudsman council.

1686 Section 40. Subsection (2) of section 429.85, Florida
1687 Statutes, is amended to read:

1688 429.85 Residents' bill of rights.—

1689 (2) The provider shall ensure that residents and their
1690 legal representatives are made aware of the rights, obligations,
1691 and prohibitions set forth in this part. Residents must also be
1692 given the statewide toll-free telephone number and e-mail
1693 address of the State Long-Term Care Ombudsman Program, the
1694 telephone number ~~names, addresses, and telephone numbers~~ of the
1695 local ombudsman council and the Elder Abuse Hotline operated by
1696 the Department of Children and Families ~~the central abuse~~
1697 ~~hotline~~ where they may lodge complaints.

1698 Section 41. This act shall take effect July 1, 2015.