

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SPB 7018

INTRODUCER: For consideration by the Children, Families, and Elder Affairs Committee

SUBJECT: State Ombudsman Program

DATE: February 2, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Crosier	Hendon		Pre-meeting

I. Summary:

SPB 7018 revises the operating structure and internal procedures of the State Long-Term Care Ombudsman Program (LTCOP), housed in the Department of Elder Affairs (DOEA), to reflect current practices, maximize operational and program efficiencies and conform to the federal Older Americans Act. The bill revises the appointment process for three at-large positions to the State Long-Term Care Council whereby the appointments are no longer made by the Governor but by the Secretary of DOEA.

The bill has an effective date of July 1, 2015, and has no fiscal impact.

II. Present Situation:

Older Americans Act

The Older Americans Act (OAA) was enacted in 1965 to assist elders to lead independent, meaningful, and dignified lives in their own communities rather than in more costly residential or nursing home settings. The OAA programs are administered through area agencies on aging under the Department of Elder Affairs (DOEA). To be eligible for OAA programs, individuals must be 60 years of age or older. Spouses and disabled adults younger than 60 years of age may receive services in certain circumstances. Preference is given to elders with the greatest economic or social needs, particularly low-income minority individuals; however, no means testing is allowed. The OAA was most recently reauthorized in 2006 to supply funding for several nutritional programs and in-home and supportive services for elders.

Florida's Long-Term Care Ombudsman Program (LTCOP) was created in 1975 as a result of the OAA. The OAA grants a special set of residents' rights to individuals who live in long-term care facilities such as nursing homes, assisted living facilities, and adult family care homes.

Long-Term Care Ombudsman Program

In Florida, a long-term care ombudsman is a volunteer who helps to improve the lives of people who live in long-term care settings by investigating and resolving their complaints against the facility.

As Florida's elders' transition into long-term care facilities, they need a strong support system. Unfortunately, many long-term care residents do not have anyone to look out for their best interests when it comes to personal health, safety, welfare and rights. The LTCOP is made up of more than 300 volunteers who are advocates for the residents to improve their quality of life.

The LTCOP is administratively housed within DOEA. The LTCOP undertakes to discover, investigate, and determine the presence of conditions which constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. The LTCOP accomplishes these tasks by conducting investigations of complaints filed by or on behalf of residents and by conducting annual administrative assessments of such facilities. An administrative assessment is a resident-centered, unannounced review of conditions in the facility which have an impact on the rights, health, safety, and welfare of residents with the purpose of noting needed improvements and making recommendations to enhance the quality of life for residents.

The LTCOP has no enforcement and regulatory oversight authority for long-term care facilities. The Agency for Health Care Administration (AHCA) has the responsibility for licensing long-term care facilities. Instead, ombudsmen, after completing specified statutory requirements, are certified as independent advocates, working solely on behalf of residents to mediate disputes between residents and long-term care facilities on an informal basis. The LTCOP provides residents with the opportunity to develop personal and confidential relationships with the ombudsmen to create an environment that allows a resident to candidly voice complaints. If a complaint is verified by the ombudsman that could violate the facility's licensure or be criminal activity, the LTCOP refers the issue to AHCA, Adult Protective Services within the Department of Children and Families (DCF), the Attorney General's Office, or other agencies as appropriate.¹

In August 2003, the Administration on Aging, Department of Health and Human Services, issued its Compliance Review of the State of Florida Long-Term Ombudsman Program² The Review identified the designation of local ombudsmen, legislative advocacy and information dissemination as areas that the State of Florida's policies and practices were out of compliance with the Older Americans Act. Statutory changes are necessary to bring state law into conformity with the federal law.

¹ Department of Elder Affairs, *Senate Bill 508 Fiscal Analysis* (Dec. 31, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

² Administration on Aging, Department of Health and Human Services, *Compliance Review of the State of Florida Long-Term Care Ombudsman Program* (August 30, 2011)(on file with the Senate Committee on Children, Families, and Elder Affairs).

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III. Effect of Proposed Changes:

Section 1 amends s. 400.0060, F.S., to revise and create definitions of terms used in the ombudsman statute. Definitions for “long-term care facility,” and “ombudsman” are updated. The term “representative of the office” is defined to include the state ombudsman, employees, and certified ombudsmen. The term “state ombudsman” is defined as the person appointed by the secretary of DOEA to administer the ombudsman program. The term “resident” is revised to include persons over 18 years of age who reside in a long-term care facility. The term “district” refers to geographical areas in the state designated by the state ombudsman and each district may have more than one local unit of ombudsmen.

Section 2 amends s. 400.0061, F.S., which provides legislative findings and intent, to conform existing text to newly defined terms.

Section 3 amends s. 400.0063, F.S., which establishes the office of state ombudsman and to conform existing text to newly defined terms.

Section 4 amends s. 400.0065, F.S., relating to duties of the state ombudsman, to give the state ombudsman the final authority to make appointments of individuals serving as ombudsman; to update position titles of individuals to receive the annual ombudsman program report; and to revise terminology to conform to new definitions.

Section 5 amends s. 400.0067, F.S., relating to the State Long-Term Care Ombudsman Council, to update terminology. Currently, appointments to the three at-large positions to the Council are made by the Governor. Under the bill, the district manager, in consultation with the district ombudsmen, will select a district ombudsman as a representative to the Council. The state ombudsman will submit the names to the secretary of DOEA who will make the appointment to the three at-large positions on the state council.

Section 6 amends 400.0069, F.S., relating to the local ombudsman councils. The councils are renamed as districts and are designated by the state ombudsman. The bill provides for development of family councils within facilities; clarifies that ombudsmen may serve in a different district for good cause shown; and clarifies the application, background screening, and training requirements needed to become a certified ombudsman. The section also requires that each district convene a public meeting every quarter. The section provides that ombudsmen identify, investigate, and resolve complaints made by or on behalf of residents relating to actions or omissions by providers of long term care services, other public agencies, guardians, or representative payees which may adversely affect the health, safety, welfare, or rights of a resident.

Section 7 amends s. 400.0070, F.S., relating to ombudsman conflicts of interest to conform to newly-defined terms.

Section 8 amends s. 400.0071, F.S., relating to how ombudsmen investigate and resolve complaints. The bill separates and removes references to the administrative assessment process from the complaint process.

Section 9 amends s. 400.0073, F.S., relating to complaint investigations, access to long-term care facilities by ombudsmen, reporting procedures in the event access is denied to the facility or resident and conforms to newly defined terms.

Section 10 amends s. 400.0074, F.S., to provide an onsite administrative assessment at least annually, which must be resident-centered and focus on the rights, health, safety, and welfare of the residents. The assessment must not impose an unreasonable burden on the long-term care facility. The bill moves the rulemaking authority from s. 400.072, F.S., and conforms to newly-defined terms.

Section 11 amends s. 400.0075, F.S., relating to complaint resolutions, to conform to newly-defined terms and to clarify complaint reporting procedures.

Section 12 revises s. 400.0078, F.S., relating to access to the ombudsmen, to add-email as a way to make complaints. The bill also requires long-term care facilities to notify all residents and their families upon admission that retaliation against residents making complaints to the ombudsman is prohibited by law.

Section 13 amends s. 400.0079, F.S., relating to immunity for persons making complaints, to conform to newly-defined terms.

Section 14 amends s. 400.0081, F.S., relating to ombudsman access to long-term care facilities, including access to medical and social records of a resident as necessary to resolve a complaint. This section also provides conformity to newly-defined terms, and deletes the limitation that ombudsmen have access to residents only for investigating a complaint.

Section 15 amends s. 400.0083, F.S., relating to interference with the ombudsman; to make technical and conforming changes.

Section 16 amends s. 400.0087, F.S., relating to oversight of the ombudsman program by DOEA, to make technical and conforming changes.

Section 17 amends 400.0089, F.S., relating to information on ombudsman complaints, to make technical and conforming changes.

Section 18 amends s. 400.0091, F.S., relating to ombudsman training, to clarify training requirements and make conforming changes.

Sections 19 – 44 amends ss. 20.41, 400.021, 400.022, 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23, 400.235, 415.102, 415.1034, 415.104, 415.1055, 415.106, 145.107, 429.02, 429.07, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, 429.85, F.S., to conform to newly-defined terms and to make technical changes.

Section 45 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.41, 400.0060, 400.0061, 400.0063, 400.0065, 400.0067, 400.0069, 400.0070, 400.0071, 400.0073, 400.0074, 400.0075, 400.0078, 400.0079, 400.0081, 400.0083, 400.0087, 400.0089, 400.0091, 400.021, 400.022, 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23, 400.235, 415.102, 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.07, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, and 429.85.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

None.

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B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
