



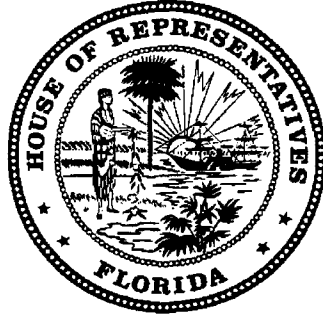
---

# Health Care Appropriations Subcommittee

## Meeting Packet

March 4, 2014  
1:30 PM—3:30 PM

Webster Hall



## **AGENDA**

Health Care Appropriations Subcommittee

March 4, 2014

1:30 PM—3:30 PM


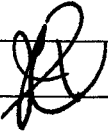
Webster Hall

- I. Call to Order
- II. Roll Call
- III. HB 91 State Ombudsman Program by K. Roberson
- IV. CS/HB 573 Assisted Living Facilities by Ahern
- V. Update by the Department of Veterans' Affairs on State Veterans' Nursing Home Study and Building Process and the DVA Outreach and Branding Campaign
  - Mike Prendergast, Executive Director, Florida Department of Veterans' Affairs
- VI. Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 91 State Ombudsman Program  
**SPONSOR(S):** Roberson  
**TIED BILLS:** IDEN./SIM. BILLS: SB 508

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	11 Y, 0 N	Poche	Brazzell
2) Health Care Appropriations Subcommittee		Clark 	Pridgeon 
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

HB 91 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 (OAA), 42 U.S.C. §§ 3001, et seq. The LTCOP is operated pursuant to part I of chapter 400, F.S.

The bill revises part I of chapter 400, F.S., to:

- Provide the state ombudsman with final authority to appoint district ombudsmen;
- Include definitions of “district”, “state ombudsman,” and “representative of the office,” revise the definition of “resident,” and delete the definition of “local council” to reflect a change in organizational structure;
- Revise the duties of the State Long-Term Care Ombudsman Council;
- Revise and clarify the application and training requirements in order to be appointed as an ombudsman, including the addition of a level 2 background screening as part of the application process;
- Expand the duties of ombudsmen in the local districts to comply with the OAA, to include clarified parameters for complaint resolution and the authority to establish resident and family councils within long-term care facilities;
- Remove the notice publication requirement for internal LTCOP district staff meetings;
- Clarify the complaint investigation process and the facility assessment process;
- Conform the complaint investigation process to the requirements of the OAA; and
- Require certain information to be provided to a resident of a long-term care facility upon first entering the facility to confirm that retaliatory action against a resident for filing a grievance or exercising a resident’s rights is prohibited.

The bill appears to have no significant fiscal impact on state or local government.

The bill provides an effective date of July 1, 2014.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

###### *Department of Elder Affairs*

Florida has nearly 4,400,000 residents aged 60 and older.<sup>1</sup> The state is first in the nation in the percentage of citizens who are elders, measuring 23% of total population in 2010 and estimated to soar to 35% of total population in 2030.<sup>2</sup>

The Department of Elder Affairs (DOEA), established in 1992, serves as the primary agency for administering human services programs for the elderly and developing policy recommendations for long-term care.<sup>3</sup> Section 20.41, F.S., creates the DOEA and details some of its roles and responsibilities.<sup>4</sup> For example, the DOEA is statutorily required to administer the State Long-Term Care Ombudsman Council<sup>5</sup> and the local long-term care ombudsman councils,<sup>6,7</sup> which provide advocacy on behalf of residents of long-term care facilities by identifying, investigating, and resolving complaints made by or on behalf of residents.

The DOEA is designated as the State Unit on Aging, as defined in the Older Americans Act of 1965 (OAA).<sup>8</sup> Under the OAA, the DOEA is responsible for organizing, coordinating, and providing community-based services and opportunities for older Floridians and their families, including the oversight of services to help elders age in place with dignity and independence and to preserve the rights of the most vulnerable.<sup>9</sup>

The DOEA contracts with an Area Agency on Aging (AAA) in each of eleven Planning and Service Areas (PSAs) to provide coordinated and integrated long-term care services and prevention and early intervention services to the elderly population of Florida.<sup>10</sup> Each of the AAAs then contract with community care lead agencies to provide actual services to the elderly in each PSA.<sup>11</sup>

The DOEA is authorized to administer certain trust funds, in conjunction with federal funds provided to the state, to operate programs and provide services for the elderly.<sup>12</sup> The programs and services include, but are not limited to, home and community based services, nursing home diversion, the Alzheimer's disease initiative, the Comprehensive Assessment and Review for Long-Term Care Services (CARES) program, and consumer assistance programs, such as the State Long-Term Care Ombudsman Program.

---

<sup>1</sup> Florida Office of Economic and Demographic Research, *2010 Census Summary File 1 Profiles-Detailed Age by Race/Hispanic Origin by Gender*, available at <http://edr.state.fl.us/Content/population-demographics/2010-census/data/index.cfm> (last viewed December 10, 2013).

<sup>2</sup> Florida Department of Elder Affairs, *Summary of Programs and Services 2013*, page 9, available at <http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2013/2013%20SOPS.pdf>

<sup>3</sup> S. 430.03(1), F.S.

<sup>4</sup> Art. IV, s. 12 of the Florida Constitution permits the creation of the Department of Elder Affairs. The number of executive branch agencies is capped at twenty-five, exclusive of agencies specifically mentioned in the constitution.

<sup>5</sup> S. 400.0067, F.S.

<sup>6</sup> S. 400.0069, F.S.

<sup>7</sup> S. 20.41(4), F.S.

<sup>8</sup> S. 20.41(5), F.S.

<sup>9</sup> S. 430.04, F.S.

<sup>10</sup> S. 20.41(6), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> S. 20.415, F.S.

## State Long-Term Care Ombudsman Program

The State Long-Term Care Ombudsman Program (LTCOP) is a statewide, volunteer-based system of local councils that act as advocates for residents of long-term care facilities.<sup>13</sup> The LTCOP was established by Title VII of the federal Older Americans Act<sup>14</sup> and its operation is governed by state statute.<sup>15</sup> Through 17 districts<sup>16</sup> that together cover the entire state, volunteers identify, investigate, and resolve complaints made by, or on behalf of, residents of nursing homes, assisted living facilities, adult family care homes, and continuing care retirement communities. In addition to investigating and resolving complaints, the LTCOP performs the following services or activities:

- Monitoring of and commenting on the development and implementation of federal, state, and local laws, regulations, and policies regarding health, safety, and welfare of residents in long-term care facilities.
- Providing information and referrals with regard to long-term care facilities.
- Conducting annual assessments of long-term care facilities.
- Aiding the development of resident and family councils.<sup>17</sup>

An ombudsman "is a specially trained and certified volunteer who has been given authority under federal and state law to identify, investigate and resolve complaints made by, or on behalf of, long-term care facility residents."<sup>18</sup> It is important to note that the LTCOP does not have enforcement or regulatory oversight. Certified ombudsmen in the local councils work as independent advocates for residents to mediate disputes on an informal basis.

Florida law requires that the Office of State Long-Term Care Ombudsman (office) maintain a statewide system for collecting and analyzing data relating to complaints and conditions in long-term care facilities.<sup>19</sup> The office must also publish the information pertaining to the number and types of complaints received by the program on a quarterly basis.<sup>20</sup> Additionally, federal law requires the office to have a statewide data system to collect, analyze, and report data on residents, facilities, and complaints to federal officials as well as the National Ombudsman Resource Center.<sup>21</sup>

Ombudsmen also complete annual assessments of each long-term care facility in the state to ensure the health, safety, and welfare of the residents.<sup>22</sup> No advance warning of the assessment is to be given to the long-term care facility. An ombudsman is not allowed to forcibly enter the facility to complete the assessment; however, the administrator of the facility commits a violation of part I of ch. 400, F.S., if the ombudsman is not allowed to enter the facility, and, in such circumstances, the Agency for Health Care Administration (AHCA) may use appropriate administrative remedies.<sup>23</sup> The AHCA also conducts

---

<sup>13</sup> For 2011-2012, 356 volunteers worked an estimated 85,440 hours which resulted in estimated average savings in salaries and administrative costs of \$1,861,737. See Florida's Long-Term Care Ombudsman Program, *2011-2012 Annual Report*, available at [http://ombudsman.myflorida.com/publications/ar/LTCOP%20ANNUAL%20REPORT%202011-2012\[1\].pdf](http://ombudsman.myflorida.com/publications/ar/LTCOP%20ANNUAL%20REPORT%202011-2012[1].pdf) (also on file with Healthy Families Subcommittee staff).

<sup>14</sup> 42 U.S.C. §§ 3001 et seq. (as amended by Public Law 106-501).

<sup>15</sup> Part I, Ch. 400, F.S.

<sup>16</sup> The 17 districts are: Northwest Florida, Panhandle, North Central Florida, Withlacoochee Area, First Coast South, First Coast, Mid & South Pinellas, Pasco & North Pinellas, West Central Florida, East Central Florida, Southwest Florida, Palm Beach County, Treasure Coast, Broward County, South Dade & the Keys, North Dade, and South Central Florida. See Florida Department of Elder Affairs, *Summary of Programs & Services 2013*, January 2013, page 27 (available at <http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2013/2013%20SOPS.pdf>).

<sup>17</sup> Florida Department of Elder Affairs, *Summary of Programs & Services 2013*, January 2013, page 77 (available at <http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2013/2013%20SOPS.pdf>).

<sup>18</sup> Florida's Long-Term Care Ombudsman Program, *Residents and Families*, available at <http://ombudsman.myflorida.com/ResidentFam.php> (last visited December 10, 2013).

<sup>19</sup> S. 400.0089, F.S.

<sup>20</sup> Id.

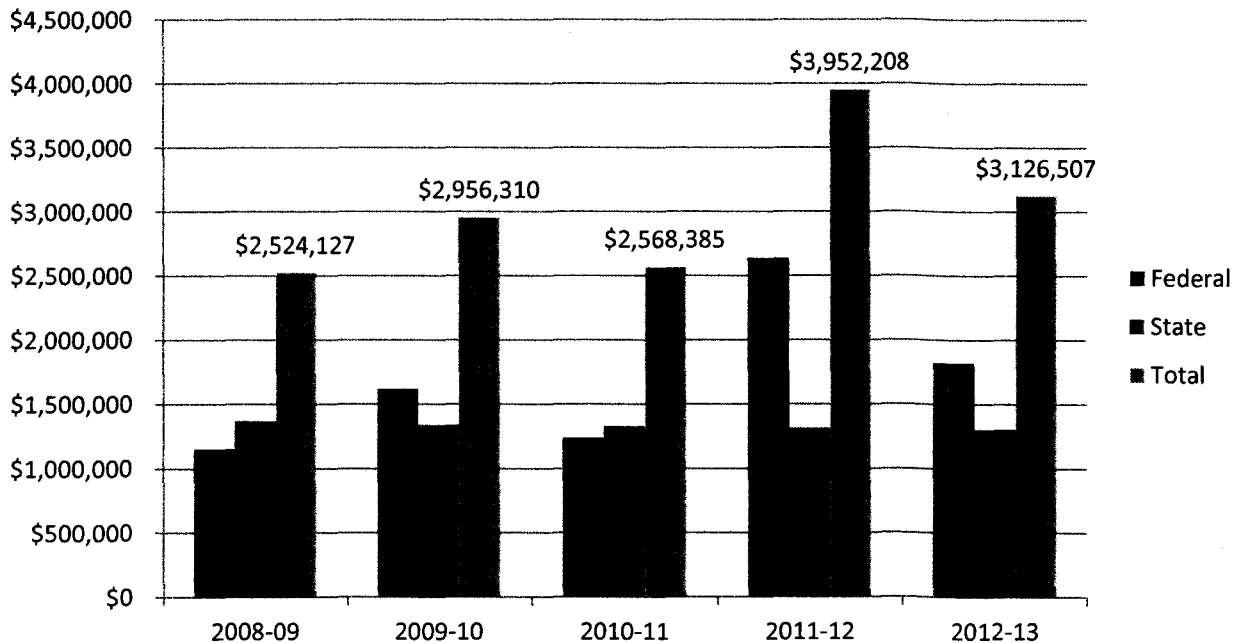
<sup>21</sup> 42 U.S.C. s. 3058g(c) and 42 U.S.C. s. 3058g(h)(1).

<sup>22</sup> S. 400.0074, F.S.; the entire list of responsibilities of an ombudsman can be found at s. 400.0065(1), F.S.

<sup>23</sup> Id.

routine licensure and complaint surveys of nursing homes, assisted living facilities, and adult day care homes. As part of the survey process, the AHCA must complete offsite survey preparation, which includes a review of information about the facility prior to the survey. One of the sources of this information is the State Long-Term Care Ombudsman.

The following chart shows the recent appropriation history of the LTCOP<sup>24</sup>:



The following chart details some of the activities of the LTCOP, including the number of facilities assessed, the total number of assessments conducted, and the number of complaints investigated<sup>25</sup>:

FEDERAL REPORTING YEAR	FACILITIES	ASSESSMENTS	COMPLAINTS INVESTIGATED
2008-2009	3,932	3,932	8,302
2009-2010	4,016	4,016	8,651
2010-2011	4,039	3,347	7,534
2011-2012	4,039	4,269	8,600

### Effect of Proposed Changes

The bill revises the operating structure and internal procedures of the LTCOP to reflect current practices, maximize operational and program efficiencies, and conform to the OAA.<sup>26</sup> The bill establishes local ombudsman districts to replace the current council structure and outlines district membership, duties and responsibilities.

### Definitions

The bill amends the definitions applicable to part I of chapter 400, F.S., by deleting the term “local council.” The bill adds the definition of “district” to refer to a geographical area of the state, as designated by the state ombudsman, where certified ombudsmen carry out the duties of the LTCOP. The bill revises the definition of “ombudsman” to mean an individual certified by the state ombudsman

<sup>24</sup> Id. at page 78.

<sup>25</sup> Id. at page 79.

<sup>26</sup> See supra, FN 14.

under the statute to carry out the duties of the LTCOP and creates a separate definition of “state ombudsman” to refer to the person appointed by the Secretary of the DOEA to lead the LTCOP. The bill revises the definition of “resident” to include a person aged 18 years or older who resides in a long-term care facility. The bill adds the definition of “representative of the office” to mean the state ombudsman, employees of his or her office, and persons certified to serve as ombudsmen under the LTCOP. Finally, the bill adds the definition of “state ombudsman program” to mean the LTCOP operating under the direction of the state ombudsman’s office.

The bill revises many sections of part I of chapter 400, F.S., to remove reference to the current ombudsman councils and replaces that term with more specific terms referring to districts, the ombudsman or ombudsmen, and representatives of the those offices. This change in terminology is consistent with the terms of the OAA.

#### State Long-Term Care Ombudsman and Office Representative Duties and Responsibilities

In s. 400.0065(2)(c), F.S., which outlines the duties and responsibilities of the State Long-Term Care Ombudsman, the bill deletes reference to staff positions established for the purpose of coordinating the activities of the local councils. The bill specifies who may be a representative of the office of the ombudsman and the requirements for the certification.

The bill eliminates the authority of the state ombudsman to enter into an agreement with the State Advocacy Council for the purpose of coordinating activities and avoiding duplication of effort.

#### State Long-Term Care Ombudsman Council

The bill removes references to the local councils in the outline of the duties of the State Long-Term Care Ombudsman Council (Council), established in s. 400.0067, F.S. The bill requires the state ombudsman to submit a list of his or her recommendations for individuals to serve in at-large positions on the Council to the Secretary of DOEA, who will then appoint those members of the Council. Current law gives the Governor the authority to appoint at-large members to the Council. The bill also permits the district manager, in consultation with the district ombudsmen, to recommend replacement of the selected ombudsman who represents the district on the Council. If a replacement ombudsman is named by the district manager, the state ombudsman must be notified of the replacement.

The bill also revises the internal operational aspects of the Council, such as permitting the Council to perform its duties if one or more positions are vacant and providing procedures for dealing with the absence of a member from 50 percent or more of the meetings.

#### Long-Term Care Ombudsman Districts

The bill revises s. 400.0069, F.S., which establishes local ombudsman councils and details their duties and membership. The bill deletes reference to the term “local council” and replaces it with “long-term care ombudsman districts.” This reflects the change in structure of the LTCOP from a large state council with multiple local councils, each acting autonomously, to a more hierarchal structure consisting of a district ombudsman and representatives of the office of the state ombudsman. Every person working in a district ombudsman office will be certified as an ombudsman and will be permitted to carry out the duties and responsibilities of an ombudsman.

The state ombudsman is given the authority to appoint ombudsmen in the districts. At his or her discretion, the state ombudsman may appoint an ombudsman to a district other than where he or she resides. This reflects the change in program structure to emphasize that the LTCOP is to be directed and administered by the state ombudsman and the districts are to act as an extension of the state ombudsman with regard to policy and operations. The district ombudsmen may provide technical assistance in forming resident and family councils within the long-term care facilities.

The bill provides a list of individuals who may not be appointed as an ombudsman. The list includes:

- An owner or representative of a long-term care facility;
- A provider or representative of long-term care services;
- An employee of the Agency for Health Care Administration;
- An employee of the Department of Elder Affairs (except for representatives of the office);
- An employee of the Department of Children and Families; or
- An employee of the Agency for Persons with Disabilities.

The bill requires a person to successfully complete a level 2 background screening before he or she can be appointed as an ombudsman. A Level 2 background screening is detailed in ss. 435.04 and 430.0402, F.S. The bill clarifies that the state ombudsman has final authority to appoint an individual as an ombudsman. The bill also gives the state ombudsman the authority to rescind any appointment of an ombudsman.

### Training

When a person is appointed as an ombudsman, the bill states that the person may participate in district activities but may not represent the office or conduct an investigation until he or she completes initial training required under s. 400.0091(1), F.S., and is certified as an ombudsman by the state ombudsman. The bill specifies certain training requirements for all representatives of the office of the state ombudsman contained in s. 400.0091, F.S. First, the bill requires all representatives of the office to have a minimum of 20 hours of training upon appointment as an ombudsman. Second, the bill requires 10 hours of training each year after appointment.

### Complaint Investigations and Facility Assessments

The bill revises s. 400.0073, F.S., to address complaint investigations. The bill removes reference to "local council" and replaces it with "district", which is consistent with the elimination of the local councils and the implementation of the district structure. A representative of the office of the ombudsman is now tasked with identifying and investigating any complaint by or on behalf of a resident that meets specified criteria already in law. The bill replaces reference to the local council with "representative of the office" to clarify who has responsibility in complaint investigations.

The bill requires onsite administrative assessments to be completed by representatives of the office in a resident-centered manner. The bill requires an ombudsman who is denied access to a facility by a facility administrator to report the denial to the state ombudsman, who shall then report the incident to the AHCA for possible disciplinary action, including action against the facility license. Lastly, the bill permits the DOEA, in consultation with the state ombudsman, to develop rules to implement procedures for conducting onsite assessments of long-term care facilities.

The bill makes changes to the notification and resolution process for complaints contained in s. 400.0075, F.S. First, the bill permits a representative of the office of the ombudsman to identify a verified complaint and bring it to the attention of the facility administrator, while adhering to the confidentiality provisions in s. 400.0077, F.S. The administrator must set target dates, with the concurrence of the ombudsman, for resolution of the complaint. If the complaint is not resolved by the target date or remedial action to address the complaint is not forthcoming, the bill permits the representative of the office to extend the target date if he or she believes that additional time will lead to a resolution of the complaint or refer the complaint to the district manager.<sup>27</sup>

If an ombudsman determines, during an investigation, that the health, safety, welfare, or rights of a resident are in immediate danger, the bill requires immediate notification of the district manager. The bill then requires the district manager, after verifying the nature of the threat, to notify appropriate state

<sup>27</sup> The district manager is a state employee who provides administrative management for the district office.  
STORAGE NAME: h0091b.HCAS.DOCX  
DATE: 2/5/2014

agencies, law enforcement, the state ombudsman, and legal advocate.<sup>28</sup> The bill permits the legal advocate to provide appropriate information to law enforcement to initiate an investigation if he or she believes a criminal act was committed in conjunction with the complaint.

The bill requires the DOEA to consult with the state ombudsman to develop rules governing conflicts of interest involving ombudsmen and implementing state and local complaint procedures. The bill requires that the rules governing complaint procedures include rules on receiving, investigating, and resolving complaints of residents of long-term care facilities.

The bill requires the state ombudsman or his or her designee to assume responsibility for resolving a complaint that has been referred by a district. The bill grants the state ombudsman the authority to take certain action if the facility fails to resolve or remedy the complaint. These actions by the state ombudsman can include publicizing the complaint, publicizing the recommendations for resolution of the complaint, and recommending facility reviews to the appropriate state agency that licenses a particular non-compliant facility to ensure the conditions that gave rise to the original complaint are resolved and do not recur.

The bill requires the office of the state ombudsman to establish an email address for receiving complaints from, or on behalf of, residents of long-term care facilities. The bill also requires that each resident, or his or her representative, upon first entering a long-term care facility and as part of the initial information packet provided by the facility, receive specific information stating that retaliatory action cannot be taken against a resident for filing a grievance against the facility or otherwise exercising his or her resident's rights.

The bill clarifies, in light of eliminating the local council structure and implementing the district structure, that representatives of the office of the state ombudsman and the members of the Council have immunity from civil and criminal liability for any action taken in good faith performance of their duties as outlined in the statute.

#### Conforming Changes

Finally, the bill makes conforming changes to the following statutes to reflect the provisions of the bill: sections 20.41, 400.021, 400.022, 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23, 400.235, 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.07, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, 429.85, and 744.444, F.S.

#### B. SECTION DIRECTORY:

- Section 1:** Amends s. 400.0060, F.S., relating to definitions.
- Section 2:** Amends s. 400.0061, F.S., relating to legislative findings and intent; long-term care facilities.
- Section 3:** Amends s. 400.0063, F.S., relating to establishment of Office of State Long-Term Care Ombudsman; designation of ombudsman and legal advocate.
- Section 4:** Amends s. 400.0065, F.S., relating to State Long-Term Care Ombudsman; duties and responsibilities.
- Section 5:** Amends s. 400.0067, F.S., relating to State Long-Term Care Ombudsman Council; duties; membership.
- Section 6:** Amends s. 400.0069, F.S., relating to local long-term care ombudsman councils; duties; membership.
- Section 7:** Amends s. 400.0070, F.S., relating to conflicts of interest.

<sup>28</sup> The legal advocate is established in the Office of the State Long-Term Care Ombudsman by s. 400.0063(3), F.S. The legal advocate is selected by the state ombudsman and must be a member in good standing with The Florida Bar. Some of the duties of the legal advocate include assisting the state ombudsman in carrying out his or her duties with respect to abuse, neglect, or violation of rights of residents of long-term care facilities and pursuing administrative, legal, and other appropriate remedies on behalf of residents.

- Section 8:** Amends s. 400.0071, F.S., relating to State Long-Term Care ombudsman program complaint procedures.
- Section 9:** Amends s. 400.0073, F.S., relating to state and local ombudsman council investigations.
- Section 10:** Amends s. 400.0074, F.S., relating to local ombudsman council onsite administrative assessments.
- Section 11:** Amends s. 400.0075, F.S., relating to complaint notification and resolution procedures.
- Section 12:** Amends s. 400.0078, F.S., relating to citizen access to state Long-Term Care ombudsman program services.
- Section 13:** Amends s. 400.0079, F.S., relating to immunity.
- Section 14:** Amends s. 400.0081, F.S., relating to access to facilities, residents, and records.
- Section 15:** Amends s. 400.0083, F.S., relating to interference; retaliation; penalties.
- Section 16:** Amends s. 400.0087, F.S., relating to department oversight; funding.
- Section 17:** Amends s. 400.0089, F.S., relating to complaint data reports.
- Section 18:** Amends s. 400.0091, F.S., relating to training.
- Section 19:** Amends s. 20.41, F.S., relating to Department of Elder Affairs.
- Section 20:** Amends s. 400.021, F.S., relating to definitions.
- Section 21:** Amends s. 400.022, F.S., relating to residents' rights.
- Section 22:** Amends s. 400.0255, F.S., relating to resident transfer or discharge; requirements and procedures; hearings.
- Section 23:** Amends s. 400.1413, F.S., relating to volunteers in nursing homes.
- Section 24:** Amends s. 400.162, F.S., relating to property and personal affairs of residents.
- Section 25:** Amends s. 400.19, F.S., relating to right of entry and inspection.
- Section 26:** Amends s. 400.191, F.S., relating to availability, distribution, and posting of reports and records.
- Section 27:** Amends s. 400.23, F.S., relating to rules; evaluation and deficiencies; licensure status.
- Section 28:** Amends s. 400.235, F.S., relating to nursing home quality and licensure status; Gold Seal Program.
- Section 29:** Amends s. 415.1034, F.S., relating to mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.
- Section 30:** Amends s. 415.104, F.S., relating to protective investigations of cases of abuse, neglect, or exploitation of vulnerable adults; transmittal of records to state attorney.
- Section 31:** Amends s. 415.1055, F.S., relating to notification to administrative entities.
- Section 32:** Amends s. 415.106, F.S., relating to cooperation by the department and criminal justice and other agencies.
- Section 33:** Amends s. 415.107, F.S., relating to confidentiality of reports and records.
- Section 34:** Amends s. 429.02, F.S., relating to definitions.
- Section 35:** Amends s. 429.07, F.S., relating to license required; fee.
- Section 36:** Amends s. 429.19, F.S., relating to violations; imposition of administrative fines; grounds.
- Section 37:** Amends s. 429.26, F.S., relating to appropriateness of placements; examinations of residents.
- Section 38:** Amends s. 429.28, F.S., relating to resident of bill of rights.
- Section 39:** Amends s. 429.34, F.S., relating to right of entry and inspection.
- Section 40:** Amends s. 429.35, F.S., relating to maintenance of records; reports.
- Section 41:** Amends s. 429.67, F.S., relating to licensure.
- Section 42:** Amends s. 429.85, F.S., relating to residents' bill of rights.
- Section 43:** Amends s. 744.444, F.S., relating to power of guardian without court approval.
- Section 44:** Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

By eliminating the local council structure, the bill removes internal staff meetings at the district level from the requirements of the Sunshine Act. As a result, the bill removes the notice requirement for internal staff meetings, which is expected to save the DOEA an average of \$3,382 per year, based on costs over the last three years.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The DOEA has appropriate rule-making authority to institute the provisions of the bill.



C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2       An act relating to the state ombudsman program;  
 3       amending s. 400.0060, F.S.; revising and providing  
 4       definitions; amending s. 400.0061, F.S.; revising  
 5       legislative intent with respect to citizen ombudsmen;  
 6       deleting references to ombudsman councils and  
 7       transferring their responsibilities to representatives  
 8       of the Office of State Long-Term Care Ombudsman;  
 9       amending s. 400.0063, F.S.; revising duties of the  
 10      office; amending s. 400.0065, F.S.; revising the  
 11      purpose of state and local ombudsman councils;  
 12      establishing districts; requiring the state ombudsman  
 13      to submit an annual report to the Governor, the  
 14      Legislature, and specified agencies and entities;  
 15      amending s. 400.0067, F.S.; revising duties and  
 16      membership of the State Long-Term Care Ombudsman  
 17      Council; amending s. 400.0069, F.S.; requiring the  
 18      state ombudsman to designate and direct program  
 19      districts; providing duties of representatives of the  
 20      office in the districts; providing for appointment and  
 21      qualifications of district ombudsmen; prohibiting  
 22      certain individuals from serving as ombudsmen;  
 23      amending s. 400.0070, F.S.; providing conditions under  
 24      which a representative of the office could be found to  
 25      have a conflict of interest; amending s. 400.0071,  
 26      F.S.; requiring the Department of Elderly Affairs to

27 |       consult with the state ombudsman before adopting rules  
 28 |       pertaining to complaint resolution; amending s.  
 29 |       400.0073, F.S.; providing procedures for investigation  
 30 |       of complaints; amending s. 400.0074, F.S.; revising  
 31 |       procedures for conducting onsite administrative  
 32 |       assessments; authorizing the department to adopt  
 33 |       rules; amending s. 400.0075, F.S.; revising complaint  
 34 |       notification and resolution procedures; amending s.  
 35 |       400.0078, F.S.; providing for a resident or  
 36 |       representative of a resident to receive additional  
 37 |       information regarding resident rights; amending s.  
 38 |       400.0079, F.S.; providing immunity from liability for  
 39 |       a representative of the office under certain  
 40 |       circumstances; amending s. 400.0081, F.S.; requiring  
 41 |       long-term care facilities to provide representatives  
 42 |       of the office with access to facilities, residents,  
 43 |       and records for certain purposes; amending s.  
 44 |       400.0083, F.S.; conforming provisions to changes made  
 45 |       by the act; amending s. 400.0087, F.S.; providing for  
 46 |       the office to coordinate ombudsman services with  
 47 |       Disability Rights Florida; amending s. 400.0089, F.S.;  
 48 |       conforming provisions to changes made by the act;  
 49 |       amending s. 400.0091, F.S.; revising training  
 50 |       requirements for representatives of the office and  
 51 |       ombudsmen; amending ss. 20.41, 400.021, 400.022,  
 52 |       400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23,

53 400.235, 415.1034, 415.104, 415.1055, 415.106,  
 54 415.107, 429.02, 429.07, 429.19, 429.26, 429.28,  
 55 429.34, 429.35, 429.67, 429.85, and 744.444, F.S.;  
 56 conforming provisions to changes made by the act;  
 57 providing an effective date.

58

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

60

61 Section 1. Section 400.0060, Florida Statutes, is amended  
 62 to read:

63 400.0060 Definitions.—When used in this part, unless the  
 64 context clearly dictates otherwise, the term:

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

70 (2) "Agency" means the Agency for Health Care  
 71 Administration.

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

73 (4) "District" means a geographical area designated by the  
 74 state ombudsman in which individuals certified as ombudsmen  
 75 carry out the duties of the state ombudsman program. ~~"Local~~  
 76 ~~council" means a local long term care ombudsman council~~  
 77 ~~designated by the ombudsman pursuant to s. 400.0069. Local~~

78 ~~councils are also known as district long-term care ombudsman~~  
 79 ~~councils or district councils.~~

80 (5) "Long-term care facility" means a nursing home  
 81 facility, assisted living facility, adult family-care home,  
 82 board and care facility, facility where continuing long-term  
 83 care is provided, or any other similar residential adult care  
 84 facility.

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

87 (7) "Ombudsman" means an individual who has been certified  
 88 by the state ombudsman as meeting the requirements of ss.  
 89 400.0069, 400.0070, and 400.0091 ~~the individual appointed by the~~  
 90 ~~Secretary of Elderly Affairs to head the Office of State Long-~~  
 91 ~~Term Care Ombudsman.~~

92 (8) "Representative of the office" means the state  
 93 ombudsman, an employee of the office, or an individual certified  
 94 as an ombudsman.

95 ~~(9)~~ (8) "Resident" means an individual 18 ~~60~~ years of age  
 96 or older who resides in a long-term care facility.

97 ~~(10)~~ (9) "Secretary" means the Secretary of Elderly  
 98 Affairs.

99 ~~(11)~~ (10) "State council" means the State Long-Term Care  
 100 Ombudsman Council created by s. 400.0067.

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

104           (13) "State ombudsman program" means the program operating  
 105 under the direction of the office.

106           Section 2. Section 400.0061, Florida Statutes, is amended  
 107 to read:

108           400.0061 Legislative findings and intent; long-term care  
 109 facilities.—

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

129 | ombudsman, and carry out a state ~~long-term care~~ ombudsman  
 130 | program.

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

151 |       Section 3. Section 400.0063, Florida Statutes, is amended  
 152 | to read:

153 |       400.0063 Establishment of Office of State Long-Term Care  
 154 | Ombudsman; designation of ombudsman and legal advocate.-

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

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

163 (b) The state ombudsman shall be appointed by and shall  
 164 serve at the pleasure of the Secretary of Elderly Affairs. The  
 165 secretary shall appoint a person who has expertise and  
 166 experience in the fields of long-term care and advocacy to serve  
 167 as state ombudsman.

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

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

174 1. Assisting the state ombudsman in carrying out the  
 175 duties of the office with respect to the abuse, neglect,  
 176 exploitation, or violation of rights of residents of long-term  
 177 care facilities.

178 2. Assisting the state council and representatives of the  
 179 office ~~local councils~~ in carrying out their responsibilities  
 180 under this part.



181 3. Pursuing administrative, legal, and other appropriate  
 182 remedies on behalf of residents.

183 4. Serving as legal counsel to the state council and  
 184 representatives of the office ~~local councils, or individual~~  
 185 ~~members thereof,~~ against whom any suit or other legal action is  
 186 initiated in connection with the performance of the official  
 187 duties of the state ombudsman program ~~councils or an individual~~  
 188 ~~member.~~

189 Section 4. Section 400.0065, Florida Statutes, is amended  
 190 to read:

191 400.0065 Office of State Long-Term Care Ombudsman; duties  
 192 and responsibilities.-

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

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

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

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

206 (d) Ensure that residents have regular and timely access  
 207 to the services provided through the office and that residents  
 208 and complainants receive timely responses from representatives  
 209 of the office to their complaints.

210 (e) Represent the interests of residents before  
 211 governmental agencies and seek administrative, legal, and other  
 212 remedies to protect the health, safety, welfare, and rights of  
 213 the residents.

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

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

223 (h) Provide technical support for the development of  
 224 resident and family councils to protect the well-being and  
 225 rights of residents.

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

228 (a) Establish and coordinate districts ~~local councils~~  
 229 throughout the state.

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

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

246 (d) Contract for services necessary to carry out the  
 247 activities of the office.

248 (e) Apply for, receive, and accept grants, gifts, or other  
 249 payments, including, but not limited to, real property, personal  
 250 property, and services from a governmental entity or other  
 251 public or private entity or person, and make arrangements for  
 252 the use of such grants, gifts, or payments.

253 (f) Coordinate, to the greatest extent possible, state and  
 254 local ombudsman services with the protection and advocacy  
 255 systems for individuals with developmental disabilities and  
 256 mental illnesses and with legal assistance programs for the poor  
 257 through adoption of memoranda of understanding and other means.

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

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

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

278 1. Contain and analyze data collected concerning  
 279 complaints about and conditions in long-term care facilities and  
 280 the disposition of such complaints.

281 2. Evaluate the problems experienced by residents.

282 3. Analyze the successes of the state ombudsman program  
 283 during the preceding year, including an assessment of how

284 | successfully the office ~~program~~ has carried out its  
 285 | responsibilities under the Older Americans Act.

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

292 |         5. Contain recommendations from the state ~~Long-Term Care~~  
 293 | ~~Ombudsman~~ council regarding program functions and activities and  
 294 | recommendations for policy, regulatory, and statutory changes  
 295 | designed to protect residents' rights, health, safety, and  
 296 | welfare.

297 |         6. Contain any relevant recommendations from  
 298 | representatives of the office ~~local councils~~ regarding program  
 299 | functions and activities.

300 |         Section 5. Section 400.0067, Florida Statutes, is amended  
 301 | to read:

302 |         400.0067 State Long-Term Care Ombudsman Council; duties;  
 303 | membership.—

304 |         (1) There is created, within the Office of State Long-Term  
 305 | Care Ombudsman, the State Long-Term Care Ombudsman Council.

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

307 |         (a) Serve as an advisory body to assist the state  
 308 | ombudsman in reaching a consensus among districts ~~local councils~~

309 on issues affecting residents and impacting the optimal  
 310 operation of the program.

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

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

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

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

326 (f) Assist the state ombudsman in preparing the annual  
 327 report described in s. 400.0065.

328 (3) The state ~~Long-Term Care Ombudsman~~ council shall be  
 329 composed of one active certified ombudsman from each district  
 330 ~~local council member elected by each local council~~ plus three  
 331 at-large members appointed by the secretary ~~Governor~~.

332 (a) Each district manager, in consultation with the  
 333 district ombudsmen, shall select a district ombudsman ~~local~~  
 334 ~~council shall elect by majority vote a representative from among~~

335 ~~the council members~~ to represent the interests of the district  
 336 ~~local council~~ on the state council. ~~A local council chair may~~  
 337 ~~not serve as the representative of the local council on the~~  
 338 ~~state council.~~

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

345 2. The secretary Governor shall appoint three at-large  
 346 members chosen from the list.

347 3. If the secretary Governor does not appoint an at-large  
 348 member to fill a vacant position within 60 days after the list  
 349 is submitted, the state secretary, ~~after consulting with the~~  
 350 ~~ombudsman~~, shall appoint an at-large member to fill that vacant  
 351 position.

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

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

356 ~~(b)3.~~ A district manager, in consultation with the  
 357 district ombudsmen, ~~local council~~ may recommend replacement  
 358 ~~removal~~ of its selected ombudsman elected representative from  
 359 the state council ~~by a majority vote~~. If the district manager,  
 360 in consultation with the district ombudsmen, selects a

361 replacement ombudsman, ~~council votes to remove its~~  
 362 ~~representative, the local council chair shall immediately notify~~  
 363 the state ombudsman must be notified. ~~The secretary shall advise~~  
 364 ~~the Governor of the local council's vote upon receiving notice~~  
 365 ~~from the ombudsman.~~

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

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

372 (e)(d)1. The state council shall elect a chair to serve  
 373 for a term of 1 year. A chair may not serve more than two  
 374 consecutive terms.

375 2. The chair shall select a vice chair from among the  
 376 members. The vice chair shall preside over the state council in  
 377 the absence of the chair.

378 3. The chair may create additional executive positions as  
 379 necessary to carry out the duties of the state council. Any  
 380 person appointed to an executive position shall serve at the  
 381 pleasure of the chair, and his or her term shall expire on the  
 382 same day as the term of the chair.

383 4. A chair may be immediately removed from office before  
 384 ~~prior to~~ the expiration of his or her term by a vote of two-  
 385 thirds of all state council members present at any meeting at  
 386 which a quorum is present. If a chair is removed from office



387 | before ~~prior to~~ the expiration of his or her term, a replacement  
 388 | chair shall be chosen during the same meeting in the same manner  
 389 | as described in this paragraph, and the term of the replacement  
 390 | chair shall begin immediately. The replacement chair shall serve  
 391 | for the remainder of the term and is eligible to serve two  
 392 | subsequent consecutive terms.

393 |        (f)~~(e)~~1. The state council shall meet upon the call of the  
 394 | chair or upon the call of the state ombudsman. The state council  
 395 | shall meet at least quarterly but may meet more frequently as  
 396 | needed.

397 |        2. A quorum shall be considered present if more than 50  
 398 | percent of all active state council members are in attendance at  
 399 | the same meeting.

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

404 |        (g)~~(f)~~ Members shall receive no compensation but shall,  
 405 | with approval from the state ombudsman, be reimbursed for per  
 406 | diem and travel expenses as provided in s. 112.061.

407 |        Section 6. Section 400.0069, Florida Statutes, is amended  
 408 | to read:

409 |        400.0069 ~~Local~~ Long-term care ombudsman districts  
 410 | ~~councils~~; duties; appointment ~~membership~~.-

411 |        (1)(a) The state ombudsman shall designate districts ~~local~~  
 412 | ~~long-term care ombudsman councils~~ to carry out the duties of the

413 state ~~Long-Term Care~~ ombudsman program ~~within local communities~~.  
 414 Each district ~~local council~~ shall function under the direction  
 415 of the state ombudsman.

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

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

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

430 (b) Discover, investigate, and determine the existence of  
 431 abuse, ~~or~~ neglect, or exploitation using in any long-term care  
 432 ~~facility and to use~~ the procedures provided for in ss. 415.101-  
 433 415.113 when applicable.

434 (c) Identify ~~Elicit, receive,~~ investigate, ~~respond to,~~ and  
 435 resolve complaints made by or on behalf of residents relating to  
 436 actions or omissions by providers or representatives of  
 437 providers of long-term care services, other public or private

438 agencies, guardians, or representative payees that may adversely  
 439 affect the health, safety, welfare, or rights of residents.

440 (d) Review and, if necessary, comment on all existing or  
 441 proposed rules, regulations, and other governmental policies and  
 442 actions relating to long-term care facilities that may  
 443 potentially have an effect on the rights, health, safety, and  
 444 welfare of residents.

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

449 (f) Recommend that the state ombudsman and the legal  
 450 advocate seek administrative, legal, and other remedies to  
 451 protect the health, safety, welfare, and rights of ~~the~~  
 452 residents.

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

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

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

463           (4) Each district ~~local council~~ shall be composed of  
 464 ombudsmen ~~members~~ whose primary residences are ~~residence is~~  
 465 located within the boundaries of the district ~~local council's~~  
 466 jurisdiction.

467           (a) Upon good cause shown, the state ombudsman, in his or  
 468 her sole discretion, may appoint an ombudsman to another  
 469 district. ~~The ombudsman shall strive to ensure that each local~~  
 470 ~~council include the following persons as members:~~

471           1. ~~At least one medical or osteopathic physician whose~~  
 472 ~~practice includes or has included a substantial number of~~  
 473 ~~geriatric patients and who may practice in a long term care~~  
 474 ~~facility;~~

475           2. ~~At least one registered nurse who has geriatric~~  
 476 ~~experience;~~

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

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

479           5. ~~At least six nursing home residents or representative~~  
 480 ~~consumer advocates for nursing home residents;~~

481           6. ~~At least three residents of assisted living facilities~~  
 482 ~~or adult family care homes or three representative consumer~~  
 483 ~~advocates for alternative long term care facility residents;~~

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

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

486           (b) The following individuals may not be appointed as  
 487 ombudsmen:

- 488           1. The owner or representative of a long-term care  
 489 facility.
- 490           2. A provider or representative of a provider of long-term  
 491 care services.
- 492           3. An employee of the agency.
- 493           4. An employee of the department, except for a  
 494 representative of the office.
- 495           5. An employee of the Department of Children and Families.
- 496           6. An employee of the Agency for Persons with  
 497 Disabilities. In no case shall the medical director of a long-  
 498 term care facility or an employee of the agency, the department,  
 499 the Department of Children and Family Services, or the Agency  
 500 for Persons with Disabilities serve as a member or as an ex  
 501 officio member of a council.
- 502           (5)(a) To be appointed as an ombudsman, an individual  
 503 must:
- 504           1. Individuals wishing to join a local council shall  
 505 Submit an application to the state ombudsman or his or her  
 506 designee.
- 507           2. Successfully complete level 2 background screening  
 508 pursuant to s. 430.0402 and chapter 435. The ombudsman shall  
 509 review the individual's application and advise the secretary of  
 510 his or her recommendation for approval or disapproval of the  
 511 candidate's membership on the local council. If the secretary  
 512 approves of the individual's membership, the individual shall be  
 513 appointed as a member of the local council.

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

523           (c) Upon appointment as an ombudsman, the individual may  
 524 participate in district activities but may not represent the  
 525 office or conduct any authorized program duties until the  
 526 individual has completed the initial training specified in s.  
 527 400.0091(1) and has been certified by the state ombudsman.

528           (d) The state ombudsman, for good cause shown, such as  
 529 development of a conflict of interest, failure to adhere to the  
 530 policies and procedures established by the office, or  
 531 demonstrated inability to carry out the responsibilities of the  
 532 office, may rescind the appointment of an individual as an  
 533 ombudsman. After the appointment is rescinded, the individual  
 534 may not conduct any duties as an ombudsman and may not represent  
 535 the office or the state ombudsman program. ~~A local council may~~  
 536 ~~recommend the removal of one or more of its members by~~  
 537 ~~submitting to the ombudsman a resolution adopted by a two-thirds~~  
 538 ~~vote of the members of the council stating the name of the~~  
 539 ~~member or members recommended for removal and the reasons for~~

540 | ~~the recommendation. If such a recommendation is adopted by a~~  
 541 | ~~local council, the local council chair or district coordinator~~  
 542 | ~~shall immediately report the council's recommendation to the~~  
 543 | ~~ombudsman. The ombudsman shall review the recommendation of the~~  
 544 | ~~local council and advise the secretary of his or her~~  
 545 | ~~recommendation regarding removal of the council member or~~  
 546 | ~~members.~~

547 |       ~~(c) (a) Each local council shall elect a chair for a term~~  
 548 | ~~of 1 year. There shall be no limitation on the number of terms~~  
 549 | ~~that an approved member of a local council may serve as chair.~~

550 |       ~~(b) The chair shall select a vice chair from among the~~  
 551 | ~~members of the council. The vice chair shall preside over the~~  
 552 | ~~council in the absence of the chair.~~

553 |       ~~(c) The chair may create additional executive positions as~~  
 554 | ~~necessary to carry out the duties of the local council. Any~~  
 555 | ~~person appointed to an executive position shall serve at the~~  
 556 | ~~pleasure of the chair, and his or her term shall expire on the~~  
 557 | ~~same day as the term of the chair.~~

558 |       ~~(d) A chair may be immediately removed from office prior~~  
 559 | ~~to the expiration of his or her term by a vote of two thirds of~~  
 560 | ~~the members of the local council. If any chair is removed from~~  
 561 | ~~office prior to the expiration of his or her term, a replacement~~  
 562 | ~~chair shall be elected during the same meeting, and the term of~~  
 563 | ~~the replacement chair shall begin immediately. The replacement~~  
 564 | ~~chair shall serve for the remainder of the term of the person he~~  
 565 | ~~or she replaced.~~

566 ~~(7) Each local council shall meet upon the call of its~~  
 567 ~~chair or upon the call of the ombudsman. Each local council~~  
 568 ~~shall meet at least once a month but may meet more frequently if~~  
 569 ~~necessary.~~

570 (6) ~~(8)~~ An ombudsman ~~A member of a local council~~ shall  
 571 receive no compensation but shall, with approval from the state  
 572 ombudsman, be reimbursed for travel expenses ~~both within and~~  
 573 ~~outside the jurisdiction of the local council~~ in accordance with  
 574 ~~the provisions of s. 112.061.~~

575 (7) ~~(9)~~ The representatives of the office ~~local councils~~  
 576 are authorized to call upon appropriate state agencies ~~of state~~  
 577 ~~government~~ for ~~such~~ professional assistance as ~~may be~~ needed in  
 578 the discharge of their duties, and such. ~~All~~ state agencies  
 579 shall cooperate ~~with the local councils~~ in providing requested  
 580 information and agency representation ~~at council meetings.~~

581 Section 7. Section 400.0070, Florida Statutes, is amended  
 582 to read:

583 400.0070 Conflicts of interest.—

584 (1) A representative of the office may ~~The ombudsman shall~~  
 585 not:

586 (a) Have a direct involvement in the licensing or  
 587 certification of, or an ownership or investment interest in, a  
 588 long-term care facility or a provider of a long-term care  
 589 service.

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



592 (c) Receive, or have a right to receive, directly or  
 593 indirectly, remuneration, in cash or in kind, under a  
 594 compensation agreement with the owner or operator of a long-term  
 595 care facility.

596 (2) Each representative ~~employee~~ of the office, ~~each state~~  
 597 ~~council member, and each local council member~~ shall certify that  
 598 he or she has no conflict of interest.

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

601 (a) Situations that constitute an individual's ~~a person~~  
 602 having a conflict of interest that could materially affect the  
 603 objectivity or capacity of the individual ~~a person~~ to serve as a  
 604 representative ~~on an ombudsman council, or as an employee~~ of the  
 605 office, ~~while carrying out the purposes of the State Long Term~~  
 606 ~~Care Ombudsman Program as specified in this part.~~

607 (b) The procedure by which an individual ~~a person~~ listed  
 608 in subsection (2) shall certify that he or she has no conflict  
 609 of interest.

610 Section 8. Section 400.0071, Florida Statutes, is amended  
 611 to read:

612 400.0071 State ~~Long Term Care~~ ombudsman program complaint  
 613 procedures.—The department, in consultation with the state  
 614 ombudsman, shall adopt rules implementing state and local  
 615 complaint procedures. The rules must include procedures for  
 616 receiving, investigating, identifying, and resolving complaints  
 617 concerning the health, safety, welfare, and rights of residents+

618 ~~(1) Receiving complaints against a long term care facility~~  
 619 ~~or an employee of a long term care facility.~~

620 ~~(2) Conducting investigations of a long term care facility~~  
 621 ~~or an employee of a long term care facility subsequent to~~  
 622 ~~receiving a complaint.~~

623 ~~(3) Conducting onsite administrative assessments of long~~  
 624 ~~term care facilities.~~

625 Section 9. Section 400.0073, Florida Statutes, is amended  
 626 to read:

627 400.0073 Complaint ~~State and local ombudsman council~~  
 628 investigations.-

629 (1) A representative of the office ~~local council~~ shall  
 630 identify and investigate, ~~within a reasonable time after a~~  
 631 ~~complaint is made,~~ any complaint made by or on behalf of a  
 632 resident ~~that, a representative of a resident, or any other~~  
 633 ~~credible source based on an action or omission by an~~  
 634 ~~administrator, an employee, or a representative of a long term~~  
 635 ~~care facility which~~ might be:

- 636 (a) Contrary to law;
- 637 (b) Unreasonable, unfair, oppressive, or unnecessarily
- 638 discriminatory, even though in accordance with law;
- 639 (c) Based on a mistake of fact;
- 640 (d) Based on improper or irrelevant grounds;
- 641 (e) Unaccompanied by an adequate statement of reasons;
- 642 (f) Performed in an inefficient manner; or

643 (g) Otherwise adversely affecting the health, safety,  
 644 welfare, or rights of a resident.

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

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

650 (2)~~(4)~~ If a representative of the office ~~the ombudsman or~~  
 651 ~~any state or local council member~~ is not allowed to enter a  
 652 long-term care facility, the administrator of the facility shall  
 653 be considered to have interfered with a representative of the  
 654 office, ~~the state council, or the local council~~ in the  
 655 performance of official duties as described in s. 400.0083(1)  
 656 and to have committed a violation of this part. The  
 657 representative of the office ~~ombudsman~~ shall report a facility's  
 658 refusal to allow entry to the facility to the state ombudsman or  
 659 his or her designee, who shall then report the incident to the  
 660 agency, and the agency shall record the report and take it into  
 661 consideration when determining actions allowable under s.  
 662 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.  
 663 429.71.

664 Section 10. Section 400.0074, Florida Statutes, is amended  
 665 to read:

666 400.0074 ~~Local ombudsman council~~ Onsite administrative  
 667 assessments.-

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

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

681           (a) To the extent possible and reasonable, the  
 682 administrative assessment ~~assessments~~ shall not duplicate the  
 683 efforts of ~~the agency~~ surveys and inspections conducted by state  
 684 agencies of long-term care facilities ~~under part II of this~~  
 685 ~~chapter and parts I and II of chapter 429.~~

686           (b) An administrative assessment shall be conducted at a  
 687 time and for a duration necessary to produce the information  
 688 required to complete the assessment ~~carry out the duties of the~~  
 689 ~~local council.~~

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

693           (d) A representative of the office ~~local council member~~  
 694 ~~physically~~ present for the administrative assessment must ~~shall~~  
 695 identify himself or herself to the administrator ~~and cite the~~  
 696 ~~specific statutory authority for his or her assessment~~ of the  
 697 facility or his or her designee.

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

700           (f) A representative of the office ~~local council member~~  
 701 may not enter a single-family residential unit within a long-  
 702 term care facility during an administrative assessment without  
 703 the permission of the resident or the representative of the  
 704 resident.

705           (g) An administrative assessment must be conducted in a  
 706 manner that will impose no unreasonable burden on a long-term  
 707 care facility.

708           ~~(3) Regardless of jurisdiction, the ombudsman may~~  
 709 ~~authorize a state or local council member to assist another~~  
 710 ~~local council to perform the administrative assessments~~  
 711 ~~described in this section.~~

712           (3)~~(4)~~ An onsite administrative assessment may not be  
 713 accomplished by forcible entry. However, if a representative of  
 714 the office ~~ombudsman or a state or local council member~~ is not  
 715 allowed to enter a long-term care facility, the administrator of  
 716 the facility shall be considered to have interfered with a  
 717 representative of the office, ~~the state council, or the local~~  
 718 ~~council~~ in the performance of official duties as described in s.

719 400.0083(1) and to have committed a violation of this part. The  
 720 representative of the office ~~ombudsman~~ shall report the refusal  
 721 by a facility to allow entry to the state ombudsman or his or  
 722 her designee, who shall then report the incident to the agency,  
 723 and the agency shall record the report and take it into  
 724 consideration when determining actions allowable under s.  
 725 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.  
 726 429.71.

727 (4) The department, in consultation with the state  
 728 ombudsman, may adopt rules implementing procedures for  
 729 conducting onsite administrative assessments of long-term care  
 730 facilities.

731 Section 11. Section 400.0075, Florida Statutes, is amended  
 732 to read:

733 400.0075 Complaint notification and resolution  
 734 procedures.-

735 (1)(a) Any complaint ~~or problem~~ verified by a  
 736 representative of the office ~~an ombudsman council~~ as a result of  
 737 an investigation may ~~or onsite administrative assessment, which~~  
 738 ~~complaint or problem is determined to require remedial action by~~  
 739 ~~the local council, shall~~ be identified and brought to the  
 740 attention of the long-term care facility administrator subject  
 741 to the confidentiality provisions of s. 400.0077 in writing.  
 742 Upon receipt of the information ~~such document~~, the  
 743 administrator, with the concurrence of the representative of the  
 744 office ~~local council chair~~, shall establish target dates for

745 taking appropriate remedial action. If, by the target date, the  
 746 remedial action is not completed or forthcoming, the  
 747 representative may extend the target date if there is reason to  
 748 believe such action would facilitate the resolution of the  
 749 complaint, or the representative may refer the complaint to the  
 750 district manager ~~local council chair may, after obtaining~~  
 751 ~~approval from the ombudsman and a majority of the members of the~~  
 752 ~~local council:~~

753 1. ~~Extend the target date if the chair has reason to~~  
 754 ~~believe such action would facilitate the resolution of the~~  
 755 ~~complaint.~~

756 2. ~~In accordance with s. 400.0077, publicize the~~  
 757 ~~complaint, the recommendations of the council, and the response~~  
 758 ~~of the long term care facility.~~

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

760 (b) If an ombudsman determines ~~the local council chair~~  
 761 ~~believes~~ that the health, safety, welfare, or rights of a ~~the~~  
 762 resident are in imminent danger, the ombudsman must immediately  
 763 notify the district manager. The district manager ~~chair shall~~  
 764 ~~notify the ombudsman or legal advocate, who, after verifying~~  
 765 that such imminent danger exists, must notify the appropriate  
 766 state agencies, including law enforcement, the state ombudsman,  
 767 and the legal advocate to ensure the protection of ~~shall seek~~  
 768 ~~immediate legal or administrative remedies to protect the~~  
 769 resident.

770 (c) If the state ombudsman or legal advocate has reason to  
 771 believe that the long-term care facility or an employee of the  
 772 facility has committed a criminal act, the state ombudsman or  
 773 legal advocate shall provide the local law enforcement agency  
 774 with the relevant information to initiate an investigation of  
 775 the case.

776 (2)~~(a)~~ Upon referral from a district local council, the  
 777 state ombudsman or his or her designee ~~council~~ shall assume the  
 778 responsibility for the disposition of the complaint. If a long-  
 779 term care facility fails to take action to resolve or remedy the  
 780 ~~on a~~ complaint ~~by the state council~~, the state ombudsman ~~council~~  
 781 may, ~~after obtaining approval from the ombudsman and a majority~~  
 782 ~~of the state council members~~:

783 (a)1- In accordance with s. 400.0077, publicize the  
 784 complaint, the recommendations of the representatives of the  
 785 office ~~local or state council~~, and the response of the long-term  
 786 care facility.

787 (b)2- Recommend to the department and the agency a series  
 788 of facility reviews pursuant to s. 400.19, s. 429.34, or s.  
 789 429.67 to ensure correction and nonrecurrence of the conditions  
 790 that gave ~~give~~ rise to the complaint ~~complaints~~ against the a  
 791 long-term care facility.

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



795            (d)4. Recommend to the department and the agency that  
 796 procedures be initiated for action against ~~revocation of~~ the  
 797 long-term care facility's license in accordance with chapter  
 798 120.

799            ~~(b) If the state council chair believes that the health,~~  
 800 ~~safety, welfare, or rights of the resident are in imminent~~  
 801 ~~danger, the chair shall notify the ombudsman or legal advocate,~~  
 802 ~~who, after verifying that such imminent danger exists, shall~~  
 803 ~~seek immediate legal or administrative remedies to protect the~~  
 804 ~~resident.~~

805            (3)(e) If the state ombudsman, after consultation with the  
 806 legal advocate, has reason to believe that the long-term care  
 807 facility or an employee of the facility has committed a criminal  
 808 act, the office ~~ombudsman~~ shall provide local law enforcement  
 809 with the relevant information to initiate an investigation of  
 810 the case.

811            Section 12. Section 400.0078, Florida Statutes, is amended  
 812 to read:

813            400.0078 Citizen access to state ~~Long-Term-Care~~ ombudsman  
 814 program services.—

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

819            (2) ~~Every resident or representative of a resident shall~~  
 820 ~~receive,~~ Upon admission to a long-term care facility, each

821 resident or representative of a resident must receive  
 822 information regarding:

823 (a) The purpose of the state ~~Long Term Care~~ ombudsman  
 824 program.

825 (b) The statewide toll-free telephone number and e-mail  
 826 address for receiving complaints. ~~and~~

827 (c) Information that retaliatory action cannot be taken  
 828 against a resident for presenting grievances or for exercising  
 829 any other resident rights.

830 (d) Other relevant information regarding how to contact  
 831 representatives of the office program.

832  
 833 Residents or their representatives must be furnished additional  
 834 copies of this information upon request.

835 Section 13. Section 400.0079, Florida Statutes, is amended  
 836 to read:

837 400.0079 Immunity.—

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

842 (2) Representatives of the office and ~~The ombudsman or any~~  
 843 ~~person authorized by the ombudsman to act on behalf of the~~  
 844 ~~office, as well as all~~ members of the state council ~~and local~~  
 845 ~~councils,~~ shall be immune from any liability, civil or criminal,

846 that otherwise might be incurred or imposed during the good  
 847 faith performance of official duties.

848 Section 14. Section 400.0081, Florida Statutes, is amended  
 849 to read:

850 400.0081 Access to facilities, residents, and records.—

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

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

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

860 1. The representative of the office has the permission of  
 861 the resident or the legal representative of the resident; or

862 2. The resident is unable to consent to the review and has  
 863 no legal representative.

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

866 1. A legal representative or guardian of the resident  
 867 refuses to give permission;

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

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

873 (d) Access to the administrative records, policies, and  
 874 documents to which residents or the general public have access.

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

878 (2) The department, in consultation with the state  
 879 ombudsman ~~and the state council~~, may adopt rules to establish  
 880 procedures to ensure access to facilities, residents, and  
 881 records as described in this section.

882 Section 15. Section 400.0083, Florida Statutes, is amended  
 883 to read:

884 400.0083 Interference; retaliation; penalties.—

885 (1) It shall be unlawful for any person, long-term care  
 886 facility, or other entity to willfully interfere with a  
 887 representative of the office or ~~the state council, or a local~~  
 888 ~~council~~ in the performance of official duties.

889 (2) It shall be unlawful for any person, long-term care  
 890 facility, or other entity to knowingly or willfully take action  
 891 or retaliate against any resident, employee, or other person for  
 892 filing a complaint with, providing information to, or otherwise  
 893 cooperating with any representative of the office or ~~the state~~  
 894 ~~council, or a local council~~.

895 (3) Any person, long-term care facility, or other entity  
 896 that violates this section:

897 (a) Shall be liable for damages and equitable relief as  
 898 determined by law.

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

901 Section 16. Section 400.0087, Florida Statutes, is amended  
 902 to read:

903 400.0087 Department oversight; funding.—

904 (1) The department shall meet the costs associated with  
 905 the state ~~Long Term Care~~ ombudsman program from funds  
 906 appropriated to it.

907 (a) The department shall include the costs associated with  
 908 support of the state ~~Long Term Care~~ ombudsman program when  
 909 developing its budget requests for consideration by the Governor  
 910 and submittal to the Legislature.

911 (b) The department may divert from the federal ombudsman  
 912 appropriation an amount equal to the department's administrative  
 913 cost ratio to cover the costs associated with administering the  
 914 state ombudsman program. The remaining allotment from the Older  
 915 Americans Act program shall be expended on direct ombudsman  
 916 activities.

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

920 (3) The department is responsible for ensuring that the  
 921 office:

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

924 (b) Provides information to public and private agencies,  
 925 legislators, and others.

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

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

932 (4) The department shall also:

933 (a) Receive and disburse state and federal funds for  
 934 purposes that the state ombudsman has formulated in accordance  
 935 with the Older Americans Act.

936 (b) Whenever necessary, act as liaison between agencies  
 937 and branches of the federal and state governments and the office  
 938 ~~State Long Term Care Ombudsman Program~~.

939 Section 17. Section 400.0089, Florida Statutes, is amended  
 940 to read:

941 400.0089 Complaint data reports.—The office shall maintain  
 942 a statewide uniform reporting system to collect and analyze data  
 943 relating to complaints and conditions in long-term care  
 944 facilities and to residents for the purpose of identifying and  
 945 resolving significant complaints ~~problems~~. The office shall  
 946 publish quarterly and make readily available information  
 947 pertaining to the number and types of complaints received by the

948 | state ~~Long-Term-Care~~ ombudsman program and shall include such  
 949 | information in the annual report required under s. 400.0065.

950 | Section 18. Section 400.0091, Florida Statutes, is amended  
 951 | to read:

952 | 400.0091 Training.—The state ombudsman shall ensure that  
 953 | appropriate training is provided to all representatives  
 954 | ~~employees~~ of the office ~~and to the members of the state and~~  
 955 | ~~local councils.~~

956 | (1) All representatives ~~state and local council members~~  
 957 | ~~and employees~~ of the office shall be given a minimum of 20 hours  
 958 | of training upon employment with the office or appointment as an  
 959 | ombudsman. Ten approval as a state or local council member and  
 960 | ~~10~~ hours of continuing education is required annually  
 961 | thereafter.

962 | (2) The state ombudsman shall approve the curriculum for  
 963 | the initial and continuing education training, which must, at a  
 964 | minimum, address:

- 965 | (a) Resident confidentiality.
- 966 | (b) Guardianships and powers of attorney.
- 967 | (c) Medication administration.
- 968 | (d) Care and medication of residents with dementia and  
 969 | Alzheimer's disease.
- 970 | (e) Accounting for residents' funds.
- 971 | (f) Discharge rights and responsibilities.
- 972 | (g) Cultural sensitivity.

973 (h) Any other topic related to residency within a long-  
 974 term care facility recommended by the secretary.

975 (3) An individual ~~No employee, officer, or representative~~  
 976 ~~of the office or of the state or local councils,~~ other than the  
 977 state ombudsman, may not hold himself or herself out as a  
 978 representative of the office ~~State Long Term Care Ombudsman~~  
 979 ~~Program~~ or conduct any authorized program duty described in this  
 980 part unless the individual ~~person~~ has received the training  
 981 required by this section and has been certified by the state  
 982 ombudsman as qualified to carry out ombudsman activities on  
 983 behalf of the office ~~or the state or local councils.~~

984 Section 19. Subsection (4) of section 20.41, Florida  
 985 Statutes, is amended to read:

986 20.41 Department of Elderly Affairs.—There is created a  
 987 Department of Elderly Affairs.

988 (4) The department shall administer the Office of State  
 989 Long-Term Care Ombudsman Council, created by s. 400.0063  
 990 ~~400.0067, and the local long-term care ombudsman councils,~~  
 991 ~~created by s. 400.0069~~ and shall, as required by s. 712 of the  
 992 federal Older Americans Act of 1965, ensure that ~~both~~ the state  
 993 office operates ~~and local long-term care ombudsman councils~~  
 994 ~~operate~~ in compliance with the Older Americans Act.

995 Section 20. Subsections (11) through (19) of section  
 996 400.021, Florida Statutes, are renumbered as subsections (10)  
 997 through (18), respectively, and present subsections (10) and  
 998 (18) are amended to read:



HB 91

2014

999 400.021 Definitions.—When used in this part, unless the  
 1000 context otherwise requires, the term:

1001 ~~(10) "Local ombudsman council" means a local long-term~~  
 1002 ~~care ombudsman council established pursuant to s. 400.0069,~~  
 1003 ~~located within the Older Americans Act planning and service~~  
 1004 ~~areas.~~

1005 (17)~~(18)~~ "State ombudsman program ~~council~~" means the  
 1006 Office of State Long-Term Care Ombudsman ~~Council~~ established  
 1007 pursuant to s. 400.0063 ~~400.0067~~.

1008 Section 21. Paragraph (c) of subsection (1) and  
 1009 subsections (2) and (3) of section 400.022, Florida Statutes,  
 1010 are amended to read:

1011 400.022 Residents' rights.—

1012 (1) All licensees of nursing home facilities shall adopt  
 1013 and make public a statement of the rights and responsibilities  
 1014 of the residents of such facilities and shall treat such  
 1015 residents in accordance with the provisions of that statement.  
 1016 The statement shall assure each resident the following:

1017 (c) Any entity or individual that provides health, social,  
 1018 legal, or other services to a resident has the right to have  
 1019 reasonable access to the resident. The resident has the right to  
 1020 deny or withdraw consent to access at any time by any entity or  
 1021 individual. Notwithstanding the visiting policy of the facility,  
 1022 the following individuals must be permitted immediate access to  
 1023 the resident:

1024 1. Any representative of the federal or state government,  
 1025 including, but not limited to, representatives of the Department  
 1026 of Children and Family Services, the Department of Health, the  
 1027 Agency for Health Care Administration, the Office of the  
 1028 Attorney General, and the Department of Elderly Affairs; any law  
 1029 enforcement officer; representatives ~~members~~ of the state ~~or~~  
 1030 ~~local~~ ombudsman program ~~council~~; and the resident's individual  
 1031 physician.

1032 2. Subject to the resident's right to deny or withdraw  
 1033 consent, immediate family or other relatives of the resident.

1034  
 1035 The facility must allow representatives of the state ~~Long-Term~~  
 1036 ~~Care~~ ombudsman program ~~Council~~ to examine a resident's clinical  
 1037 records with the permission of the resident or the resident's  
 1038 legal representative and consistent with state law.

1039 (2) The licensee for each nursing home shall orally inform  
 1040 the resident of the resident's rights and provide a copy of the  
 1041 statement required by subsection (1) to each resident or the  
 1042 resident's legal representative at or before the resident's  
 1043 admission to a facility. The licensee shall provide a copy of  
 1044 the resident's rights to each staff member of the facility. Each  
 1045 such licensee shall prepare a written plan and provide  
 1046 appropriate staff training to implement ~~the provisions of this~~  
 1047 section. The written statement of rights must include a  
 1048 statement that a resident may file a complaint with the agency  
 1049 or state ~~local~~ ombudsman program ~~council~~. The statement must be

1050 in boldfaced type and shall include the ~~name, address, and~~  
 1051 telephone number and e-mail address of the state ~~numbers of the~~  
 1052 ~~local~~ ombudsman program council and the telephone number of the  
 1053 central abuse hotline where complaints may be lodged.

1054 (3) Any violation of the resident's rights set forth in  
 1055 this section shall constitute grounds for action by the agency  
 1056 under ~~the provisions of~~ s. 400.102, s. 400.121, or part II of  
 1057 chapter 408. In order to determine whether the licensee is  
 1058 adequately protecting residents' rights, the licensure  
 1059 inspection of the facility shall include private informal  
 1060 conversations with a sample of residents to discuss residents'  
 1061 experiences within the facility with respect to rights specified  
 1062 in this section and general compliance with standards, and  
 1063 consultation with the state ombudsman program council ~~in the~~  
 1064 ~~local planning and service area of the Department of Elderly~~  
 1065 ~~Affairs in which the nursing home is located.~~

1066 Section 22. Subsections (8) and (9) and (11) through (14)  
 1067 of section 400.0255, Florida Statutes, are amended to read:

1068 400.0255 Resident transfer or discharge; requirements and  
 1069 procedures; hearings.—

1070 (8) The notice required by subsection (7) must be in  
 1071 writing and must contain all information required by state and  
 1072 federal law, rules, or regulations applicable to Medicaid or  
 1073 Medicare cases. The agency shall develop a standard document to  
 1074 be used by all facilities licensed under this part for purposes  
 1075 of notifying residents of a discharge or transfer. Such document

1076 must include a means for a resident to request the state ~~local~~  
 1077 ~~long-term care~~ ombudsman program ~~council~~ to review the notice  
 1078 and request information about or assistance with initiating a  
 1079 fair hearing with the department's Office of Appeals Hearings.  
 1080 In addition to any other pertinent information included, the  
 1081 form shall specify the reason allowed under federal or state law  
 1082 that the resident is being discharged or transferred, with an  
 1083 explanation to support this action. Further, the form shall  
 1084 state the effective date of the discharge or transfer and the  
 1085 location to which the resident is being discharged or  
 1086 transferred. The form shall clearly describe the resident's  
 1087 appeal rights and the procedures for filing an appeal, including  
 1088 the right to request the state ~~local~~ ombudsman program ~~council~~  
 1089 to review the notice of discharge or transfer. A copy of the  
 1090 notice must be placed in the resident's clinical record, and a  
 1091 copy must be transmitted to the resident's legal guardian or  
 1092 representative and to the state ~~local~~ ombudsman program ~~council~~  
 1093 within 5 business days after signature by the resident or  
 1094 resident designee.

1095 (9) A resident may request that the state ~~local~~ ombudsman  
 1096 program ~~council~~ review any notice of discharge or transfer given  
 1097 to the resident. When requested by a resident to review a notice  
 1098 of discharge or transfer, the state ~~local~~ ombudsman program  
 1099 ~~council~~ shall do so within 7 days after receipt of the request.  
 1100 The nursing home administrator, or the administrator's designee,  
 1101 must forward the request for review contained in the notice to

1102 the state ~~local~~ ombudsman program ~~council~~ within 24 hours after  
 1103 such request is submitted. Failure to forward the request within  
 1104 24 hours after the request is submitted shall toll the running  
 1105 of the 30-day advance notice period until the request has been  
 1106 forwarded.

1107 (11) Notwithstanding paragraph (10)(b), an emergency  
 1108 discharge or transfer may be implemented as necessary pursuant  
 1109 to state or federal law during the period of time after the  
 1110 notice is given and before the time a hearing decision is  
 1111 rendered. Notice of an emergency discharge or transfer to the  
 1112 resident, the resident's legal guardian or representative, and  
 1113 the state ~~local~~ ombudsman program ~~council~~ if requested pursuant  
 1114 to subsection (9) must be by telephone or in person. This notice  
 1115 shall be given before the transfer, if possible, or as soon  
 1116 thereafter as practicable. A representative of the state ~~local~~  
 1117 ombudsman program ~~council~~ conducting a review under this  
 1118 subsection shall do so within 24 hours after receipt of the  
 1119 request. The resident's file must be documented to show who was  
 1120 contacted, whether the contact was by telephone or in person,  
 1121 and the date and time of the contact. If the notice is not given  
 1122 in writing, written notice meeting the requirements of  
 1123 subsection (8) must be given the next working day.

1124 (12) After receipt of any notice required under this  
 1125 section, the state ~~local~~ ombudsman program ~~council~~ may request a  
 1126 private informal conversation with a resident to whom the notice  
 1127 is directed, and, if known, a family member or the resident's

1128 | legal guardian or designee, to ensure that the facility is  
 1129 | proceeding with the discharge or transfer in accordance with ~~the~~  
 1130 | ~~requirements of~~ this section. If requested, the state local  
 1131 | ombudsman program council shall assist the resident with filing  
 1132 | an appeal of the proposed discharge or transfer.

1133 |       (13) The following persons must be present at all hearings  
 1134 | authorized under this section:

1135 |           (a) The resident, or the resident's legal representative  
 1136 | or designee.

1137 |           (b) The facility administrator, or the facility's legal  
 1138 | representative or designee.

1139 |  
 1140 | A representative of the state local long term care ombudsman  
 1141 | program council may be present at all hearings authorized by  
 1142 | this section.

1143 |       (14) In any hearing under this section, the following  
 1144 | information concerning the parties shall be confidential and  
 1145 | exempt from ~~the provisions of~~ s. 119.07(1):

1146 |           (a) Names and addresses.

1147 |           (b) Medical services provided.

1148 |           (c) Social and economic conditions or circumstances.

1149 |           (d) Evaluation of personal information.

1150 |           (e) Medical data, including diagnosis and past history of  
 1151 | disease or disability.

1152 |           (f) Any information received verifying income eligibility  
 1153 | and amount of medical assistance payments. Income information

1154 received from the Social Security Administration or the Internal  
 1155 Revenue Service must be safeguarded according to the  
 1156 requirements of the agency that furnished the data.

1157  
 1158 The exemption created by this subsection does not prohibit  
 1159 access to such information by the state ombudsman program ~~a~~  
 1160 ~~local long-term care ombudsman council~~ upon request, by a  
 1161 reviewing court if such information is required to be part of  
 1162 the record upon subsequent review, or as specified in s. 24(a),  
 1163 Art. I of the State Constitution.

1164 Section 23. Subsection (2) of section 400.1413, Florida  
 1165 Statutes, is amended to read:

1166 400.1413 Volunteers in nursing homes.—

1167 (2) This section does not affect the activities of the  
 1168 ~~state or local long-term care ombudsman~~ program ~~councils~~  
 1169 authorized under part I.

1170 Section 24. Paragraph (d) of subsection (5) of section  
 1171 400.162, Florida Statutes, is amended to read:

1172 400.162 Property and personal affairs of residents.—

1173 (5)

1174 (d) If, at any time during the period for which a license  
 1175 is issued, a licensee that has not purchased a surety bond or  
 1176 entered into a self-insurance agreement, as provided in  
 1177 paragraphs (b) and (c), is requested to provide safekeeping for  
 1178 the personal funds of a resident, the licensee shall notify the  
 1179 agency of the request and make application for a surety bond or

1180 for participation in a self-insurance agreement within 7 days  
 1181 after ~~of~~ the request, exclusive of weekends and holidays. Copies  
 1182 of the application, along with written documentation of related  
 1183 correspondence with an insurance agency or group, shall be  
 1184 maintained by the licensee for review by the agency and the  
 1185 state ~~Nursing Home and Long Term Care Facility~~ ombudsman program  
 1186 Council.

1187 Section 25. Subsections (1) and (4) of section 400.19,  
 1188 Florida Statutes, are amended to read:

1189 400.19 Right of entry and inspection.—

1190 (1) In accordance with part II of chapter 408, the agency  
 1191 and any duly designated officer or employee thereof or a  
 1192 representative member of the state ~~Long Term Care~~ ombudsman  
 1193 program Council ~~or the local long term care ombudsman council~~  
 1194 shall have the right to enter upon and into the premises of any  
 1195 facility licensed pursuant to this part, or any distinct nursing  
 1196 home unit of a hospital licensed under chapter 395 or any  
 1197 freestanding facility licensed under chapter 395 that provides  
 1198 extended care or other long-term care services, at any  
 1199 reasonable time in order to determine the state of compliance  
 1200 with ~~the provisions of~~ this part, part II of chapter 408, and  
 1201 applicable rules in force pursuant thereto. The agency shall,  
 1202 within 60 days after receipt of a complaint made by a resident  
 1203 or resident's representative, complete its investigation and  
 1204 provide to the complainant its findings and resolution.



1205 (4) The agency shall conduct unannounced onsite facility  
 1206 reviews following written verification of licensee noncompliance  
 1207 in instances in which the state ombudsman program ~~a long-term~~  
 1208 ~~care ombudsman council~~, pursuant to ss. 400.0071 and 400.0075,  
 1209 has received a complaint and has documented deficiencies in  
 1210 resident care or in the physical plant of the facility that  
 1211 threaten the health, safety, or security of residents, or when  
 1212 the agency documents through inspection that conditions in a  
 1213 facility present a direct or indirect threat to the health,  
 1214 safety, or security of residents. However, the agency shall  
 1215 conduct unannounced onsite reviews every 3 months of each  
 1216 facility while the facility has a conditional license.  
 1217 Deficiencies related to physical plant do not require followup  
 1218 reviews after the agency has determined that correction of the  
 1219 deficiency has been accomplished and that the correction is of  
 1220 the nature that continued compliance can be reasonably expected.

1221 Section 26. Subsection (1) of section 400.191, Florida  
 1222 Statutes, is amended to read:

1223 400.191 Availability, distribution, and posting of reports  
 1224 and records.—

1225 (1) The agency shall provide information to the public  
 1226 about all of the licensed nursing home facilities operating in  
 1227 the state. The agency shall, within 60 days after a licensure  
 1228 inspection visit or within 30 days after any interim visit to a  
 1229 facility, send copies of the inspection reports to the state  
 1230 ~~local long-term care ombudsman program council~~, the agency's

1231 local office, and a public library or the county seat for the  
 1232 county in which the facility is located. The agency may provide  
 1233 electronic access to inspection reports as a substitute for  
 1234 sending copies.

1235 Section 27. Subsection (6) and paragraph (c) of subsection  
 1236 (7) of section 400.23, Florida Statutes, is amended to read:

1237 400.23 Rules; evaluation and deficiencies; licensure  
 1238 status.—

1239 (6) Before ~~Prior to~~ conducting a survey of the facility,  
 1240 the survey team shall obtain a copy of the state ~~local long term~~  
 1241 ~~care~~ ombudsman program ~~council~~ report on the facility. Problems  
 1242 noted in the report shall be incorporated into and followed up  
 1243 through the agency's inspection process. This procedure does not  
 1244 preclude the state ~~local long term care~~ ombudsman program  
 1245 ~~council~~ from requesting the agency to conduct a followup visit  
 1246 to the facility.

1247 (7) The agency shall, at least every 15 months, evaluate  
 1248 all nursing home facilities and make a determination as to the  
 1249 degree of compliance by each licensee with the established rules  
 1250 adopted under this part as a basis for assigning a licensure  
 1251 status to that facility. The agency shall base its evaluation on  
 1252 the most recent inspection report, taking into consideration  
 1253 findings from other official reports, surveys, interviews,  
 1254 investigations, and inspections. In addition to license  
 1255 categories authorized under part II of chapter 408, the agency

1256 shall assign a licensure status of standard or conditional to  
 1257 each nursing home.

1258 (c) In evaluating the overall quality of care and services  
 1259 and determining whether the facility will receive a conditional  
 1260 or standard license, the agency shall consider the needs and  
 1261 limitations of residents in the facility and the results of  
 1262 interviews and surveys of a representative sampling of  
 1263 residents, families of residents, representatives of the state  
 1264 ombudsman program ~~council members in the planning and service~~  
 1265 ~~area in which the facility is located~~, guardians of residents,  
 1266 and staff of the nursing home facility.

1267 Section 28. Paragraph (a) of subsection (3), paragraph (f)  
 1268 of subsection (5), and subsection (6) of section 400.235,  
 1269 Florida Statutes, are amended to read:

1270 400.235 Nursing home quality and licensure status; Gold  
 1271 Seal Program.—

1272 (3)(a) The Gold Seal Program shall be developed and  
 1273 implemented by the Governor's Panel on Excellence in Long-Term  
 1274 Care which shall operate under the authority of the Executive  
 1275 Office of the Governor. The panel shall be composed of three  
 1276 persons appointed by the Governor, to include a consumer  
 1277 advocate for senior citizens and two persons with expertise in  
 1278 the fields of quality management, service delivery excellence,  
 1279 or public sector accountability; three persons appointed by the  
 1280 Secretary of Elderly Affairs, to include an active member of a  
 1281 nursing facility family and resident care council and a member

1282 of the University Consortium on Aging; a representative of the  
 1283 Office of State Long-Term Care Ombudsman; one person appointed  
 1284 by the Florida Life Care Residents Association; one person  
 1285 appointed by the State Surgeon General; two persons appointed by  
 1286 the Secretary of Health Care Administration; one person  
 1287 appointed by the Florida Association of Homes for the Aging; and  
 1288 one person appointed by the Florida Health Care Association.  
 1289 Vacancies on the panel shall be filled in the same manner as the  
 1290 original appointments.

1291 (5) Facilities must meet the following additional criteria  
 1292 for recognition as a Gold Seal Program facility:

1293 (f) Evidence an outstanding record regarding the number  
 1294 and types of substantiated complaints reported to the Office of  
 1295 State Long-Term Care Ombudsman ~~Council~~ within the 30 months  
 1296 preceding application for the program.

1297  
 1298 A facility assigned a conditional licensure status may not  
 1299 qualify for consideration for the Gold Seal Program until after  
 1300 it has operated for 30 months with no class I or class II  
 1301 deficiencies and has completed a regularly scheduled relicensure  
 1302 survey.

1303 (6) The agency, nursing facility industry organizations,  
 1304 consumers, Office of State Long-Term Care Ombudsman ~~Council~~, and  
 1305 members of the community may recommend to the Governor  
 1306 facilities that meet the established criteria for consideration  
 1307 for and award of the Gold Seal. The panel shall review nominees

1308 and make a recommendation to the Governor for final approval and  
 1309 award. The decision of the Governor is final and is not subject  
 1310 to appeal.

1311 Section 29. Paragraph (a) of subsection (1) of section  
 1312 415.1034, Florida Statutes, is amended to read:

1313 415.1034 Mandatory reporting of abuse, neglect, or  
 1314 exploitation of vulnerable adults; mandatory reports of death.-

1315 (1) MANDATORY REPORTING.-

1316 (a) Any person, including, but not limited to, any:

1317 1. Physician, osteopathic physician, medical examiner,  
 1318 chiropractic physician, nurse, paramedic, emergency medical  
 1319 technician, or hospital personnel engaged in the admission,  
 1320 examination, care, or treatment of vulnerable adults;

1321 2. Health professional or mental health professional other  
 1322 than one listed in subparagraph 1.;

1323 3. Practitioner who relies solely on spiritual means for  
 1324 healing;

1325 4. Nursing home staff; assisted living facility staff;  
 1326 adult day care center staff; adult family-care home staff;  
 1327 social worker; or other professional adult care, residential, or  
 1328 institutional staff;

1329 5. State, county, or municipal criminal justice employee  
 1330 or law enforcement officer;

1331 6. ~~An~~ Employee of the Department of Business and  
 1332 Professional Regulation conducting inspections of public lodging  
 1333 establishments under s. 509.032;

HB 91

2014

1334 7. Florida advocacy council member or representative of  
 1335 the Office of State Long-Term Care Ombudsman ~~council member~~; or

1336 8. Bank, savings and loan, or credit union officer,  
 1337 trustee, or employee,

1338

1339 who knows, or has reasonable cause to suspect, that a vulnerable  
 1340 adult has been or is being abused, neglected, or exploited shall  
 1341 immediately report such knowledge or suspicion to the central  
 1342 abuse hotline.

1343 Section 30. Subsection (1) of section 415.104, Florida  
 1344 Statutes, is amended to read:

1345 415.104 Protective investigations of cases of abuse,  
 1346 neglect, or exploitation of vulnerable adults; transmittal of  
 1347 records to state attorney.—

1348 (1) The department shall, upon receipt of a report  
 1349 alleging abuse, neglect, or exploitation of a vulnerable adult,  
 1350 begin within 24 hours a protective investigation of the facts  
 1351 alleged therein. If a caregiver refuses to allow the department  
 1352 to begin a protective investigation or interferes with the  
 1353 conduct of such an investigation, the appropriate law  
 1354 enforcement agency shall be contacted for assistance. If, during  
 1355 the course of the investigation, the department has reason to  
 1356 believe that the abuse, neglect, or exploitation is perpetrated  
 1357 by a second party, the appropriate law enforcement agency and  
 1358 state attorney shall be orally notified. The department and the  
 1359 law enforcement agency shall cooperate to allow the criminal

1360 investigation to proceed concurrently with, and not be hindered  
 1361 by, the protective investigation. The department shall make a  
 1362 preliminary written report to the law enforcement agencies  
 1363 within 5 working days after the oral report. The department  
 1364 shall, within 24 hours after receipt of the report, notify the  
 1365 appropriate Florida local advocacy council, or state long-term  
 1366 ~~care~~ ombudsman program ~~council~~, when appropriate, that an  
 1367 alleged abuse, neglect, or exploitation perpetrated by a second  
 1368 party has occurred. Notice to the Florida local advocacy council  
 1369 or state long-term care ombudsman program ~~council~~ may be  
 1370 accomplished orally or in writing and shall include the name and  
 1371 location of the vulnerable adult alleged to have been abused,  
 1372 neglected, or exploited and the nature of the report.

1373 Section 31. Subsection (8) of section 415.1055, Florida  
 1374 Statutes, is amended to read:

1375 415.1055 Notification to administrative entities.—

1376 (8) At the conclusion of a protective investigation at a  
 1377 facility, the department shall notify either the Florida local  
 1378 advocacy council or state long-term care ombudsman program  
 1379 ~~council~~ of the results of the investigation. This notification  
 1380 must be in writing.

1381 Section 32. Subsection (2) of section 415.106, Florida  
 1382 Statutes, is amended to read:

1383 415.106 Cooperation by the department and criminal justice  
 1384 and other agencies.—

1385 (2) To ensure coordination, communication, and cooperation  
 1386 with the investigation of abuse, neglect, or exploitation of  
 1387 vulnerable adults, the department shall develop and maintain  
 1388 interprogram agreements or operational procedures among  
 1389 appropriate departmental programs and the Office of State Long-  
 1390 Term Care Ombudsman Council, the Florida Statewide Advocacy  
 1391 Council, and other agencies that provide services to vulnerable  
 1392 adults. These agreements or procedures must cover such subjects  
 1393 as the appropriate roles and responsibilities of the department  
 1394 in identifying and responding to reports of abuse, neglect, or  
 1395 exploitation of vulnerable adults; the provision of services;  
 1396 and related coordinated activities.

1397 Section 33. Paragraph (g) of subsection (3) of section  
 1398 415.107, Florida Statutes, is amended to read:

1399 415.107 Confidentiality of reports and records.—

1400 (3) Access to all records, excluding the name of the  
 1401 reporter which shall be released only as provided in subsection  
 1402 (6), shall be granted only to the following persons, officials,  
 1403 and agencies:

1404 (g) Any appropriate official of the Florida advocacy  
 1405 council or state long-term-care ombudsman program council  
 1406 investigating a report of known or suspected abuse, neglect, or  
 1407 exploitation of a vulnerable adult.

1408 Section 34. Subsection (20) of section 429.02, Florida  
 1409 Statutes, is amended to read:

1410 429.02 Definitions.—When used in this part, the term:



1411 (20) "Resident's representative or designee" means a  
 1412 person other than the owner, or an agent or employee of the  
 1413 facility, designated in writing by the resident, if legally  
 1414 competent, to receive notice of changes in the contract executed  
 1415 pursuant to s. 429.24; to receive notice of and to participate  
 1416 in meetings between the resident and the facility owner,  
 1417 administrator, or staff concerning the rights of the resident;  
 1418 to assist the resident in contacting the state ombudsman program  
 1419 ~~council~~ if the resident has a complaint against the facility; or  
 1420 to bring legal action on behalf of the resident pursuant to s.  
 1421 429.29.

1422 Section 35. Paragraph (b) of subsection (3) of section  
 1423 429.07, Florida Statutes, is amended to read:

1424 429.07 License required; fee.—

1425 (3) In addition to the requirements of s. 408.806, each  
 1426 license granted by the agency must state the type of care for  
 1427 which the license is granted. Licenses shall be issued for one  
 1428 or more of the following categories of care: standard, extended  
 1429 congregate care, limited nursing services, or limited mental  
 1430 health.

1431 (b) An extended congregate care license shall be issued to  
 1432 facilities providing, directly or through contract, services  
 1433 beyond those authorized in paragraph (a), including services  
 1434 performed by persons licensed under part I of chapter 464 and  
 1435 supportive services, as defined by rule, to persons who would

1436 otherwise be disqualified from continued residence in a facility  
 1437 licensed under this part.

1438 1. In order for extended congregate care services to be  
 1439 provided, the agency must first determine that all requirements  
 1440 established in law and rule are met and must specifically  
 1441 designate, on the facility's license, that such services may be  
 1442 provided and whether the designation applies to all or part of  
 1443 the facility. Such designation may be made at the time of  
 1444 initial licensure or relicensure, or upon request in writing by  
 1445 a licensee under this part and part II of chapter 408. The  
 1446 notification of approval or the denial of the request shall be  
 1447 made in accordance with part II of chapter 408. Existing  
 1448 facilities qualifying to provide extended congregate care  
 1449 services must have maintained a standard license and may not  
 1450 have been subject to administrative sanctions during the  
 1451 previous 2 years, or since initial licensure if the facility has  
 1452 been licensed for less than 2 years, for any of the following  
 1453 reasons:

- 1454 a. A class I or class II violation;
- 1455 b. Three or more repeat or recurring class III violations  
 1456 of identical or similar resident care standards from which a  
 1457 pattern of noncompliance is found by the agency;
- 1458 c. Three or more class III violations that were not  
 1459 corrected in accordance with the corrective action plan approved  
 1460 by the agency;

1461 d. Violation of resident care standards which results in  
 1462 requiring the facility to employ the services of a consultant  
 1463 pharmacist or consultant dietitian;

1464 e. Denial, suspension, or revocation of a license for  
 1465 another facility licensed under this part in which the applicant  
 1466 for an extended congregate care license has at least 25 percent  
 1467 ownership interest; or

1468 f. Imposition of a moratorium pursuant to this part or  
 1469 part II of chapter 408 or initiation of injunctive proceedings.

1470 2. A facility that is licensed to provide extended  
 1471 congregate care services shall maintain a written progress  
 1472 report on each person who receives services which describes the  
 1473 type, amount, duration, scope, and outcome of services that are  
 1474 rendered and the general status of the resident's health. A  
 1475 registered nurse, or appropriate designee, representing the  
 1476 agency shall visit the facility at least quarterly to monitor  
 1477 residents who are receiving extended congregate care services  
 1478 and to determine whether ~~if~~ the facility is in compliance with  
 1479 this part, part II of chapter 408, and relevant rules. One of  
 1480 the visits may be in conjunction with the regular survey. The  
 1481 monitoring visits may be provided through contractual  
 1482 arrangements with appropriate community agencies. A registered  
 1483 nurse shall serve as part of the team that inspects the  
 1484 facility. The agency may waive one of the required yearly  
 1485 monitoring visits for a facility that has been licensed for at  
 1486 least 24 months to provide extended congregate care services,

1487 if, during the inspection, the registered nurse determines that  
 1488 extended congregate care services are being provided  
 1489 appropriately, and if the facility has no class I or class II  
 1490 violations and no uncorrected class III violations. The agency  
 1491 must first consult with the state ~~long-term care~~ ombudsman  
 1492 program council for the area in which the facility is located to  
 1493 determine whether ~~if~~ any complaints have been made and  
 1494 substantiated about the quality of services or care. The agency  
 1495 may not waive one of the required yearly monitoring visits if  
 1496 complaints have been made and substantiated.

1497 3. A facility that is licensed to provide extended  
 1498 congregate care services must:

1499 a. Demonstrate the capability to meet unanticipated  
 1500 resident service needs.

1501 b. Offer a physical environment that promotes a homelike  
 1502 setting, provides for resident privacy, promotes resident  
 1503 independence, and allows sufficient congregate space as defined  
 1504 by rule.

1505 c. Have sufficient staff available, taking into account  
 1506 the physical plant and firesafety features of the building, to  
 1507 assist with the evacuation of residents in an emergency.

1508 d. Adopt and follow policies and procedures that maximize  
 1509 resident independence, dignity, choice, and decisionmaking to  
 1510 permit residents to age in place, so that moves due to changes  
 1511 in functional status are minimized or avoided.

1512 e. Allow residents or, if applicable, a resident's  
 1513 representative, designee, surrogate, guardian, or attorney in  
 1514 fact to make a variety of personal choices, participate in  
 1515 developing service plans, and share responsibility in  
 1516 decisionmaking.

1517 f. Implement the concept of managed risk.

1518 g. Provide, directly or through contract, the services of  
 1519 a person licensed under part I of chapter 464.

1520 h. In addition to the training mandated in s. 429.52,  
 1521 provide specialized training as defined by rule for facility  
 1522 staff.

1523 4. A facility that is licensed to provide extended  
 1524 congregate care services is exempt from the criteria for  
 1525 continued residency set forth in rules adopted under s. 429.41.  
 1526 A licensed facility must adopt its own requirements within  
 1527 guidelines for continued residency set forth by rule. However,  
 1528 the facility may not serve residents who require 24-hour nursing  
 1529 supervision. A licensed facility that provides extended  
 1530 congregate care services must also provide each resident with a  
 1531 written copy of facility policies governing admission and  
 1532 retention.

1533 5. The primary purpose of extended congregate care  
 1534 services is to allow residents, as they become more impaired,  
 1535 the option of remaining in a familiar setting from which they  
 1536 would otherwise be disqualified for continued residency. A  
 1537 facility licensed to provide extended congregate care services

1538 may also admit an individual who exceeds the admission criteria  
 1539 for a facility with a standard license, if the individual is  
 1540 determined appropriate for admission to the extended congregate  
 1541 care facility.

1542 6. Before the admission of an individual to a facility  
 1543 licensed to provide extended congregate care services, the  
 1544 individual must undergo a medical examination as provided in s.  
 1545 429.26(4) and the facility must develop a preliminary service  
 1546 plan for the individual.

1547 7. When a facility can no longer provide or arrange for  
 1548 services in accordance with the resident's service plan and  
 1549 needs and the facility's policy, the facility shall make  
 1550 arrangements for relocating the person in accordance with s.  
 1551 429.28(1)(k).

1552 8. Failure to provide extended congregate care services  
 1553 may result in denial of extended congregate care license  
 1554 renewal.

1555 Section 36. Subsection (9) of section 429.19, Florida  
 1556 Statutes, is amended to read:

1557 429.19 Violations; imposition of administrative fines;  
 1558 grounds.—

1559 (9) The agency shall develop and disseminate an annual  
 1560 list of all facilities sanctioned or fined for violations of  
 1561 state standards, the number and class of violations involved,  
 1562 the penalties imposed, and the current status of cases. The list  
 1563 shall be disseminated, at no charge, to the Department of

1564 Elderly Affairs, the Department of Health, the Department of  
 1565 Children and Families ~~Family Services~~, the Agency for Persons  
 1566 with Disabilities, the area agencies on aging, the Florida  
 1567 Statewide Advocacy Council, and the state ~~and local~~ ombudsman  
 1568 program ~~councils~~. The Department of Children and Families ~~Family~~  
 1569 ~~Services~~ shall disseminate the list to service providers under  
 1570 contract to the department who are responsible for referring  
 1571 persons to a facility for residency. The agency may charge a fee  
 1572 commensurate with the cost of printing and postage to other  
 1573 interested parties requesting a copy of this list. This  
 1574 information may be provided electronically or through the  
 1575 agency's Internet site.

1576 Section 37. Subsection (8) of section 429.26, Florida  
 1577 Statutes, is amended to read:

1578 429.26 Appropriateness of placements; examinations of  
 1579 residents.-

1580 (8) The Department of Children and Families ~~Family~~  
 1581 ~~Services~~ may require an examination for supplemental security  
 1582 income and optional state supplementation recipients residing in  
 1583 facilities at any time and shall provide the examination  
 1584 whenever a resident's condition requires it. Any facility  
 1585 administrator; personnel of the agency, the department, or the  
 1586 Department of Children and Families ~~Family Services~~; or  
 1587 representative of the state ~~long-term care~~ ombudsman program  
 1588 ~~council member~~ who believes a resident needs to be evaluated  
 1589 shall notify the resident's case manager, who shall take

1590 appropriate action. A report of the examination findings shall  
 1591 be provided to the resident's case manager and the facility  
 1592 administrator to help the administrator meet his or her  
 1593 responsibilities under subsection (1).

1594 Section 38. Subsection (2) and paragraph (b) of subsection  
 1595 (3) of section 429.28, Florida Statutes, are amended to read:

1596 429.28 Resident bill of rights.—

1597 (2) The administrator of a facility shall ensure that a  
 1598 written notice of the rights, obligations, and prohibitions set  
 1599 forth in this part is posted in a prominent place in each  
 1600 facility and read or explained to residents who cannot read.  
 1601 This notice shall include the statewide toll-free telephone  
 1602 number and e-mail address ~~name, address, and telephone numbers~~  
 1603 of the state ~~local~~ ombudsman program council and central abuse  
 1604 hotline and, when applicable, the Advocacy Center for Persons  
 1605 with Disabilities, Inc., and the Florida local advocacy council,  
 1606 where complaints may be lodged. The facility must ensure a  
 1607 resident's access to a telephone to call the state ~~local~~  
 1608 ombudsman program council, central abuse hotline, Advocacy  
 1609 Center for Persons with Disabilities, Inc., and the Florida  
 1610 local advocacy council.

1611 (3)

1612 (b) In order to determine whether the facility is  
 1613 adequately protecting residents' rights, the biennial survey  
 1614 shall include private informal conversations with a sample of  
 1615 residents and consultation with the state ombudsman program



HB 91

2014

1616 ~~council~~ in the planning and service area in which the facility  
 1617 is located to discuss residents' experiences within the  
 1618 facility.

1619 Section 39. Section 429.34, Florida Statutes, is amended  
 1620 to read:

1621 429.34 Right of entry and inspection.—In addition to the  
 1622 requirements of s. 408.811, any duly designated officer or  
 1623 employee of the department, the Department of Children and  
 1624 Families ~~Family Services~~, the Medicaid Fraud Control Unit of the  
 1625 Office of the Attorney General, the state or local fire marshal,  
 1626 or a representative member of the state ~~or local long term care~~  
 1627 ombudsman program council shall have the right to enter  
 1628 unannounced upon and into the premises of any facility licensed  
 1629 pursuant to this part in order to determine the state of  
 1630 compliance with ~~the provisions of~~ this part, part II of chapter  
 1631 408, and applicable rules. Data collected by the state ~~or local~~  
 1632 ~~long term care~~ ombudsman program councils or the state or local  
 1633 advocacy councils may be used by the agency in investigations  
 1634 involving violations of regulatory standards.

1635 Section 40. Subsection (2) of section 429.35, Florida  
 1636 Statutes, is amended to read:

1637 429.35 Maintenance of records; reports.—

1638 (2) Within 60 days after the date of the biennial  
 1639 inspection visit required under s. 408.811 or within 30 days  
 1640 after the date of any interim visit, the agency shall forward  
 1641 the results of the inspection to the state ~~local~~ ombudsman

HB 91

2014

1642 ~~program council in whose planning and service area, as defined~~  
 1643 ~~in part II of chapter 400, the facility is located;~~ to at least  
 1644 one public library or, in the absence of a public library, the  
 1645 county seat in the county in which the inspected assisted living  
 1646 facility is located; and, when appropriate, to the district  
 1647 Adult Services and Mental Health Program Offices.

1648 Section 41. Subsection (6) of section 429.67, Florida  
 1649 Statutes, is amended to read:

1650 429.67 Licensure.—

1651 (6) In addition to the requirements of s. 408.811, access  
 1652 to a licensed adult family-care home must be provided at  
 1653 reasonable times for the appropriate officials of the  
 1654 department, the Department of Health, the Department of Children  
 1655 and Family Services, the agency, and the State Fire Marshal, who  
 1656 are responsible for the development and maintenance of fire,  
 1657 health, sanitary, and safety standards, to inspect the facility  
 1658 to assure compliance with these standards. In addition, access  
 1659 to a licensed adult family-care home must be provided at  
 1660 reasonable times to representatives of the Office of State ~~for~~  
 1661 ~~the local~~ Long-Term Care Ombudsman ~~council~~.

1662 Section 42. Subsection (2) of section 429.85, Florida  
 1663 Statutes, is amended to read:

1664 429.85 Residents' bill of rights.—

1665 (2) The provider shall ensure that residents and their  
 1666 legal representatives are made aware of the rights, obligations,  
 1667 and prohibitions set forth in this part. Residents must also be

1668 | given the statewide toll-free telephone number and e-mail  
 1669 | address of the state ombudsman program and the telephone number  
 1670 | of names, addresses, and telephone numbers of the local  
 1671 | ~~ombudsman council~~ and the central abuse hotline where they may  
 1672 | lodge complaints.

1673 | Section 43. Subsection (17) of section 744.444, Florida  
 1674 | Statutes, is amended to read:

1675 | 744.444 Power of guardian without court approval.—Without  
 1676 | obtaining court approval, a plenary guardian of the property, or  
 1677 | a limited guardian of the property within the powers granted by  
 1678 | the order appointing the guardian or an approved annual or  
 1679 | amended guardianship report, may:



1680 | (17) Provide confidential information about a ward that is  
 1681 | related to an investigation arising under part I of chapter 400  
 1682 | to a representative of the local or state ombudsman program  
 1683 | ~~council member~~ conducting such an investigation. Any such  
 1684 | ombudsman shall have a duty to maintain the confidentiality of  
 1685 | such information.

1686 | Section 44. This act shall take effect July 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 573 Assisted Living Facilities  
**SPONSOR(S):** Health Innovation Subcommittee; Ahern  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 248

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	11 Y, 0 N, As CS	Guzzo	Shaw
2) Health Care Appropriations Subcommittee		Clark 	Pridgeon 
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

The bill strengthens the regulation of Assisted Living Facilities (ALFs) and makes other regulatory changes to improve the quality of ALFs.

Specifically, the bill:

- Clarifies who is responsible for assuring that mental health residents in an ALF receive necessary services.
- Requires ALFs to provide information to new residents upon admission that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident right.
- Creates a provisional Extended Congregate Care (ECC) license for new ALFs and specifies when the Agency for Health Care Administration (AHCA) may deny or revoke a facility's ECC license.
- Requires facilities with one or more, rather than three or more, state supported mental health residents obtain a Limited Mental Health (LMH) license.
- Allows AHCA to revoke the license of a facility with a controlling interest that has or had a 25 percent or greater financial or ownership interest in a second facility which closed due to financial inability to operate or was the subject of other specified administrative sanctions.
- Specifies circumstances under which AHCA must impose an immediate moratorium on a facility.
- Sets fines for class I and class II violations to a fixed amount at the midpoint of the current range and multiplies these new fine amounts for facilities licensed for 100 or more beds by 1.5 times.
- Allows AHCA to impose a fine for a class I violation even if it is corrected before AHCA inspects a facility.
- Doubles fines for repeated serious violations.
- Sets fines for class III and class IV violations to a four-tier fixed amount.
- Requires that fines be imposed for repeat minor violations regardless of correction.
- Allows AHCA to impose a \$2,500 fine against a facility that does not show good cause for terminating the residency of an individual.
- Authorizes ALF staff to perform certain additional duties to assist with self-administration of medication and increases the applicable staff training requirements from 4 hours to 6 hours.
- Adds certain responsible parties and agency personnel to the list of people who must report abuse or neglect to the Department of Children and Families' central abuse hotline.
- Requires AHCA to conduct an additional inspection of a facility cited for certain serious violations.
- Requires new facility staff, which have not previously completed core training, to attend a 2 hour pre-service orientation before interacting with residents.
- Requires the Office of Program Policy Analysis and Government Accountability to conduct a study of inter-surveyor reliability in order to determine the consistency with which regulations are applied to facilities.
- Requires AHCA to implement an ALF rating system by March 1, 2015.
- Requires AHCA to add certain content to its website by November 1, 2014, to assist consumers in selecting an ALF.

The bill will generate approximately \$672,202 in revenue based on revised fine amounts, but will require 2 full-time equivalent positions and \$159,308 in budget authority to implement the provisions of the bill.

The bill provides an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Assisted Living Facility Reform

In April of 2011, the Miami Herald completed a three part investigative series relating to assisted living facilities (ALFs). This series highlighted concerns with the management and administration of ALFs and garnered the attention of not only the public, but many state lawmakers, stakeholders, and facility residents and their families.

##### *Assisted Living Facility Workgroups*

In July 2011, Governor Rick Scott directed AHCA to examine the regulation and oversight of ALFs. In response, AHCA created the ALF workgroup. The workgroup's objective was to make recommendations to the Governor and Legislature that would improve the monitoring of safety in ALFs to help ensure the well-being of residents. After a series of meetings, the workgroup produced a final report and recommendations that they felt could strengthen oversight and reassure the public that ALFs are safe. Such recommendations included increasing administrator qualifications, expanding training for administrators and other staff, increasing survey inspection activity, and improving the integration of information among all agencies involved in the regulation of ALFs. The workgroup also noted several other issues that would require more time to evaluate and recommended they be examined by a Phase II workgroup.

Phase II of the workgroup began meeting in June 2012 to resume examining those issues not addressed by Phase I of the workgroup. Phase II of the workgroup concluded in October, 2012 and produced a final report with recommendations to the Governor and the Legislature on November 26, 2012.

The issue of improving inter-agency communication was included in the workgroup's recommendations. Specifically, the workgroup recommended improving coordination between various federal, state and local agencies with any role in long-term care facilities oversight, especially ALFs. This includes AHCA, the Long Term Care Ombudsman Program, local fire authorities, local health departments, the Department of Children and Families (DCF), the Department of Elder Affairs (DOEA), local law enforcement and the Attorney General's Office.<sup>1</sup>

##### *Assisted Living Facility Negotiated Rulemaking Committee*

In June 2012, DOEA, in consultation with AHCA, DCF, and the Department of Health (DOH), began conducting negotiated rulemaking meetings to address ALF regulation. The purpose of the meetings was to draft and amend mutually acceptable proposed rules addressing the safety and quality of services and care provided to residents within ALFs. Most of the issues addressed by the Committee were identified by Phase I of the workgroup as areas of concern that could be reformed via the rulemaking process. The Committee produced a Final Summary Report containing all the proposed rule changes agreed upon by the Committee. These proposed rule changes are currently in the final stages of the standard proposed rule making process required by law.

---

<sup>1</sup> Florida Assisted Living Workgroup, Phase II Recommendations, November 26, 2012, available at <http://www.ahca.myflorida.com/SCHSCcommitteesCouncils/ALWG/index.shtml>.

## Assisted Living Facilities - General

An ALF is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.<sup>2,3</sup> A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.<sup>4</sup> Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.<sup>5</sup>

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility.<sup>6</sup> The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on certain criteria.<sup>7</sup> If a resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or health care provider, the resident must be discharged in accordance with the Resident Bill of Rights.<sup>8</sup>

As of February 3, 2014, there were 3,035 licensed ALFs in Florida with 86,707 beds.<sup>9</sup> An ALF must have a standard license issued by AHCA, pursuant to part I of ch. 429, F.S., and part II of ch. 408, F.S.

## Specialty Licensed Facilities

In addition to a standard license, an ALF may have one or more specialty licenses that allow the ALF to provide additional care. These specialty licenses include: limited nursing services,<sup>10</sup> limited mental health services,<sup>11</sup> and extended congregate care services.<sup>12</sup>

### *Limited Mental Health License*

A mental health resident is "an individual who receives social security disability income due to a mental disorder as determined by the Social Security Administration or receives supplemental security income due to a mental disorder as determined by the Social Security Administration and receives optional state supplementation."<sup>13</sup> A LMH license is required for any facility serving 3 or more mental health residents.<sup>14</sup> To obtain this license, the facility may not have any current uncorrected deficiencies or violations and facility administrator, as well as staff providing direct care to residents must complete 6 hours of training related to LMH duties, which is either provided by or approved by DCF.<sup>15</sup> A LMH license can be obtained during initial licensure, during relicensure, or upon request of the licensee.<sup>16</sup> There are 1,022 facilities with LMH licenses.<sup>17</sup>

<sup>2</sup> Section 429.02(5), F.S.

<sup>3</sup> An ALF does not include an adult family-care home or a non-transient public lodging establishment.

<sup>4</sup> Section 429.02(16), F.S.

<sup>5</sup> Section 429.02(1), F.S.

<sup>6</sup> For specific minimum standards see Rule 58A-5.0182, F.A.C.

<sup>7</sup> S. 429.26, F.S., and Rule 58A-5.0181, F.A.C.

<sup>8</sup> S. 429.28, F.S.

<sup>9</sup> Agency for Health Care Administration, *Assisted Living Directory* (February 3, 2014), available at [http://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Assisted\\_Living/docs/alf/Directory\\_ALF.pdf](http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Assisted_Living/docs/alf/Directory_ALF.pdf) (last visited February 7, 2014).

<sup>10</sup> S. 429.07(3)(c), F.S.

<sup>11</sup> S. 429.075, F.S.

<sup>12</sup> Section 429.07(3)(b), F.S.

<sup>13</sup> S. 429.02, F.S.

<sup>14</sup> S. 429.075, F.S.

<sup>15</sup> S. 429.075, F.S.

<sup>16</sup> S. 429.075, F.S.

<sup>17</sup> See Agency for Health Care Administration, *Assisted Living Facility*, available at [http://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Assisted\\_Living/alf.shtml](http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Assisted_Living/alf.shtml) (last visited February 7, 2014).

## Extended Congregate Care License

The ECC specialty license allows an ALF to provide, directly or through contract, services performed by licensed nurses and supportive services to individuals who would otherwise be disqualified from continued residency in an ALF.<sup>18</sup> There are 277 facilities with ECC licenses.<sup>19</sup>

In order for ECC services to be provided, AHCA must first determine that all requirements in law and rule are met. ECC licensure is regulated pursuant to s. 429.07, F.S., and Rule 58A-5, F.A.C.

The primary purpose of ECC services is to allow residents, as their acuity level rises, to remain in a familiar setting. An ALF licensed to provide ECC services may also admit an individual who exceeds the admission criteria for a facility with a standard license, if the individual is determined appropriate for admission to the ECC facility. A licensed facility must adopt its own requirements within guidelines for continued residency set forth by rule. However, the facility may not serve residents who require 24-hour supervision.

Licensed ECC facilities may provide the following additional services:<sup>20</sup>

- Total help with bathing, dressing, grooming, and toileting;
- Nursing assessments conducted more frequently than monthly;
- Measuring and recording basic vital functions and weight;
- Dietary management, including providing special diets, monitoring nutrition, and observing the resident's food and fluid intake and output;
- Assisting with self-administered medications;
- Supervising residents with dementia and cognitive impairments;
- Health education, counseling, and implementing health-promoting programs;
- Rehabilitative services; and
- Escort services to health-related appointments.

Before being admitted to an ECC licensed facility to receive ECC services, the prospective resident must undergo a medical examination.<sup>21</sup> The ALF must develop a service plan that sets forth how the facility will meet the resident's needs and must maintain a written progress report on each resident who receives ECC services.

ALFs with an ECC license must meet the following staffing requirements:<sup>22</sup>

- Specify a staff member to serve as the ECC supervisor if the administrator does not perform this function;
- The administrator of an ECC licensed facility must have a minimum of 2 years of managerial, nursing, social work, therapeutic recreation, or counseling experience in a residential, long-term care, or acute care setting; and
- A baccalaureate degree may be substituted for one year of the required experience and a nursing home administrator licensed under chapter 468, F.S., shall be considered qualified.

An ECC administrator or supervisor, if different from the administrator, must complete the core training required of a standard licensed ALF administrator (26 hours plus a competency test), and 4 hours of initial training in ECC care within 3 months of beginning employment. The administrator must complete a minimum of 4 hours of continued education every 2 years.<sup>23</sup>

---

<sup>18</sup> S. 429.07(3)(b), F.S.

<sup>19</sup> See *supra* at FN 17.

<sup>20</sup> Rule 58A-5.030(8)(b), F.A.C.

<sup>21</sup> Rule 58A-5.030(6), F.A.C.

<sup>22</sup> Rule 58A-5.030(4), F.A.C.

<sup>23</sup> Rule 58A-5.0191(7), F.A.C.



All staff providing direct ECC care to residents must complete at least 2 hours of initial service training, provided by the administrator, within 6 months of beginning employment.<sup>24</sup>

ALFs with a standard license must pay a biennial license fee of \$300 per license, with an additional fee of \$50 per resident. The total fee may not exceed \$10,000. In addition to the total fee assessed for standard licensed ALFs, facilities providing ECC services must pay an additional fee of \$400 per license, with an additional fee of \$10 per resident.<sup>25</sup>

### *Limited Nursing Services License*

Limited nursing services are services beyond those provided by standard licensed ALFs. A facility with a LNS specialty license may provide the following services:<sup>26</sup>

- Passive range of motion exercises;
- Ice caps or heat relief;
- Cutting toenails of diabetic residents;
- Ear and Eye irrigations;
- Urine dipstick tests;
- Replacement of urinary catheters;
- Digital stool removal therapies;
- Applying and changing routine dressings that do not require packing or irrigation;
- Care for stage 2 pressure sores;
- Caring for casts, braces and splints;
- Conducting nursing assessments;
- Caring for and monitoring the application of anti-embolism stockings or hosiery;
- Administration and regulation of portable oxygen;
- Applying, caring for and monitoring a transcutaneous electric nerve stimulator; and
- Catheter, colostomy, ileostomy care and maintenance.

A facility holding only a standard or LNS license must meet the admission and continued residency criteria contained in Rule 59A-5.0181, F.A.C.<sup>27</sup> The following admission and continued residency criteria for potential residents must be met:<sup>28</sup>

- Be at least 18 years of age;
- Be free from signs and symptoms of any communicable disease;
- Be able to perform the activities of daily living;
- Be able to transfer, with assistance if necessary;
- Be capable of taking their own medications with assistance from staff if necessary;
- Not be a danger to themselves or others;
- Not require licensed professional mental health treatment on a 24-hour a day basis;
- Not be bedridden;
- Not have any stage 3 or 4 pressure sores;
- Not require nursing services for oral or other suctioning, assistance with tube feeding, monitoring of blood gases, intermittent positive pressure breathing therapy, or treatment of surgical incisions or wounds;
- Not require 24-hour nursing supervision;
- Not require skilled rehabilitative services; and
- Have been determined by the administrator to be appropriate for admission to the facility.

<sup>24</sup> *Id.*

<sup>25</sup> S.429.07(4), F.S.

<sup>26</sup> Rule 58A-5.031(1), F.A.C.

<sup>27</sup> Rule 58A-5.031(2), F.A.C.

<sup>28</sup> Rule 58A-5.0181(1), F.A.C.

Facilities licensed to provide limited nursing services must employ or contract with a nurse to provide necessary services to facility residents.<sup>29</sup> Licensed LNS facilities must maintain written progress reports on each resident receiving LNS. A registered nurse representing AHCA must visit these facilities at least twice a year to monitor residents and determine compliance.<sup>30</sup> A nursing assessment must be conducted at least monthly on each resident receiving limited nursing services.<sup>31</sup>

Facilities licensed to provide LNS must pay the standard licensure fee of \$300 per license, with an additional fee of \$50 per resident and the total fee may not exceed \$10,000. In addition to the standard fee, in order to obtain the LNS specialty license facilities must pay an additional biennial fee of \$250 per license, with an additional fee of \$10 per bed.<sup>32</sup> There are 999 facilities with LNS licenses.<sup>33</sup>

## Staff Training

### *Administrators and Managers*

Administrators and other ALF staff must meet minimum training and education requirements established by the DOEA by rule.<sup>34,35</sup> This training and education is intended to assist facilities to appropriately respond to the needs of residents, maintain resident care and facility standards, and meet licensure requirements.<sup>36</sup>

The current ALF core training requirements established by the DOEA consist of a minimum of 26 hours of training and passing a competency test. Administrators and managers must successfully complete the core training requirements within 3 months after becoming a facility administrator or manager. The minimum passing score for the competency test is 75 percent.<sup>37</sup>

Administrators and managers must participate in 12 hours of continuing education in topics related to assisted living every 2 years. A newly hired administrator or manager, who has successfully completed the ALF core training and continuing education requirements, is not required to retake the core training. An administrator or manager, who has successfully completed the core training but has not maintained the continuing education requirements, must retake the ALF core training and retake the competency test.<sup>38</sup>

### *Staff with Direct Care Responsibilities*

Facility administrators or managers are required to provide or arrange for 6 hours of in-service training for facility staff who provide direct care to residents. The training covers a variety of topics as provided by rule.<sup>39</sup> Staff training requirements must generally be met within 30 days after staff begin employment at the facility, however, staff must have at least 1 hour of infection control training before providing direct care to residents. Also, nurses, certified nursing assistants, and home health aides who are on staff with an ALF are exempt from many of the training requirements. In addition to the standard 6 hours of in-service training, staff must also complete 1 hour of elopement training and 1 hour of training on do not resuscitate orders, and may have to complete training on special topics such as self-administration of medication and persons with Alzheimer's disease, if applicable.

---

<sup>29</sup> Rule 58A-5.031(2), F.A.C.

<sup>30</sup> S. 429.07(2)(c), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> S. 429.07(4)(c), F.S.

<sup>33</sup> See *supra* at FN 17.

<sup>34</sup> Rule 58A-5.0191, F.A.C.

<sup>35</sup> Many of the training requirements in rule may be subject to change due to the recent DOEA negotiated rulemaking process.

<sup>36</sup> Section 429.52(1), F.S.

<sup>37</sup> Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.

<sup>38</sup> Rule 58A-5.0191, F.A.C.

<sup>39</sup> See note 26.

### *ECC Specific Training*

The administrator and ECC supervisor, if different from the administrator, must complete 4 hours of initial training in extended congregate care prior to the facility receiving its ECC license or within 3 months after beginning employment in the facility as an administrator or ECC supervisor. They must also complete a minimum of 4 hours of continuing education every 2 years in topics relating to the physical, psychological, or social needs of frail elderly and disabled persons, or persons with Alzheimer's disease or related disorders.<sup>40</sup>

All direct care staff providing care to residents in an ECC program must complete at least 2 hours of in-service training, provided by the facility administrator or ECC supervisor, within 6 months after beginning employment in the facility. The training must address ECC concepts and requirements, including the delivery of personal care and supportive services in an ECC facility.<sup>41</sup>

### *LMH Specific Training*

Administrators, managers, and staff, who have direct contact with mental health residents in a licensed LMH facility must receive a minimum of 6 hours of specialized training in working with individuals with mental health diagnoses and a minimum of 3 hours of continuing education dealing with mental health diagnoses or mental health treatment every 2 years.<sup>42</sup>

### Inspections and Surveys

AHCA is required to conduct a survey, investigation, or monitoring visit of an ALF:

- Prior to the issuance of a license.
- Prior to biennial renewal of a license.
- When there is a change of ownership.
- To monitor facilities licensed to provide LNS or ECC services, or facilities cited in the previous year for a class I or class II, or four or more uncorrected class III, violations.<sup>43</sup>
- Upon receipt of an oral or written complaint of practices that threaten the health, safety, or welfare of residents.
- If AHCA has reason to believe a facility is violating a provision of part III of ch. 429, F.S., relating to adult day care centers, or an administrative rule.
- To determine if cited deficiencies have been corrected.
- To determine if a facility is operating without a license.<sup>44</sup>

### *Abbreviated Surveys*

An applicant for licensure renewal is eligible for an abbreviated biennial survey by AHCA if the applicant does not have any:

- Class I or class II violations or uncorrected class III violations.
- Confirmed long-term care ombudsman council complaints reported to AHCA by the council.
- Confirmed licensing complaints within the two licensing periods immediately preceding the current renewal date.<sup>45</sup>

An abbreviated survey allows for a quicker and less intrusive survey by narrowing the range of items that AHCA must inspect.<sup>46</sup> AHCA is required to expand an abbreviated survey or conduct a full survey if

<sup>40</sup> Rule 58A-5.0191(7)(b), F.A.C.

<sup>41</sup> Rule 58A-5.0191(7)(c), F.A.C.

<sup>42</sup> S. 429.075, F.S. and Rule 58A-5.0191(8), F.A.C.

<sup>43</sup> See below information under subheading "Violations and Penalties" for a description of each class of violation.

<sup>44</sup> See s. 429.34, F.S., and Rule 58A-5.033, F.A.C.

<sup>45</sup> Rule 58A-5.033(2), F.A.C.

<sup>46</sup> Rule 58A-5.033(2)(b)

violations which threaten or potentially threaten the health, safety, or security of residents are identified during an abbreviated survey.<sup>47</sup>

### *Monitoring Visits*

Facilities with LNS or ECC licenses are subject to monitoring visits by AHCA in which the agency inspects the facility for compliance with the requirements of the specialty license type. An LNS licensee is subject to monitoring inspections at least twice a year. At least one registered nurse must be included in the inspection team to monitor residents receiving LNS and to determine if the facility is complying with applicable regulatory requirements.<sup>48</sup> An ECC licensee is subject to quarterly monitoring inspections. At least one registered nurse must be included in the inspection team. AHCA may waive one of the required yearly monitoring visits for an ECC facility that has been licensed for at least 24 months, if the registered nurse who participated in the monitoring inspections determines that the ECC services are being provided appropriately, and there are no serious violations or substantiated complaints about the quality of service or care.<sup>49</sup>

### Violations and Penalties

Part II of ch. 408, F.S., provides general licensure standards for all facilities regulated by AHCA. Under s. 408.813, F.S., ALFs may be subject to administrative fines imposed by AHCA for certain types of violations. Violations are categorized into four classes according to the nature of the violation and the gravity of its probable effect on residents.

- Class I violations are those conditions that AHCA determines present an imminent danger to residents or a substantial probability of death or serious physical or emotional harm. Examples include resident death due to medical neglect, risk of resident death due to inability to exit in an emergency, and the suicide of a mental health resident in an ALF licensed for Limited Mental Health. AHCA must issue a fine between \$5,000 and \$10,000 for each violation.
- Class II violations are those conditions that AHCA determines directly threaten the physical or emotional health, safety, or security of the clients. Examples include having no qualified staff in the facility, the failure to call 911 in a timely manner for resident in a semi-comatose state, and rodents in food storage area. AHCA must issue a fine between \$1,000 and \$5,000 for each violation.
- Class III violations are those conditions that AHCA determines indirectly or potentially threaten the physical or emotional health, safety, or security of clients. Examples include missing or incomplete resident assessments, erroneous documentation of medication administration, and failure to correct unsatisfactory DOH food service inspection findings in a timely manner. AHCA must issue a fine between \$500 and \$1,000 for each violation, but no fine may be imposed if the facility corrects the violation.
- Class IV violations are those conditions that do not have the potential of negatively affecting clients. Examples include failure to file an adverse incident report, incorrect phone numbers posted for advocacy resources, and failure to post current menus. AHCA can only fine a facility (between \$100 and \$200 for each violation) if the problem is not corrected.<sup>50,51</sup>

---

<sup>47</sup> *Id.*

<sup>48</sup> S. 429.07(3)(c), F.S.

<sup>49</sup> S. 429.07(3)(b), F.S.

<sup>50</sup> When fixing the amount of the fine, AHCA must consider the following factors: the gravity of the violation and the extent to which any laws or rules were violated, actions taken to correct the violations, any previous violations, the financial benefit of committing or continuing the violation, and the licensed capacity of the facility. Section 429.19(3), F.S.

<sup>51</sup> Section 429.19(2), F.S.

**Violations for Fiscal Years 2011-13**

	<b>Class I Violations</b>	<b>Class II Violations</b>	<b>Class III Violations</b>	<b>Class IV Violations</b>
<b>Average Fine Amount ALFs With Less than 100 beds</b>	\$6,585	\$1,542	\$766	\$165

In addition to financial penalties, AHCA can take other actions against a facility. AHCA may deny, revoke, and suspend any license for any of the actions listed in s. 429.14(1)(a)-(k), F.S. AHCA is required to deny or revoke the license of an ALF that has two or more class I violations that are similar to violations identified during a survey, inspection, monitoring visit, or complaint investigation occurring within the previous 2 years.<sup>52</sup> AHCA may also impose an immediate moratorium or emergency suspension on any provider if it determines that any condition presents a threat to the health, safety, or welfare of a client.<sup>53</sup> AHCA is required to publicly post notification of a license suspension or revocation, or denial of a license renewal, at the facility.<sup>54</sup> Finally, Florida's Criminal Code, under ch. 825, F.S., provides criminal penalties for the abuse, neglect, and exploitation of elderly persons<sup>55</sup> and disabled adults.<sup>56</sup>

**ALF License Suspensions, Revocations, Denials, Failed to Renew and Closed**

	<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>FY 2011-12</b>	<b>FY 2012-13</b>	<b>Total</b>
<b>Revocations</b>	4	12	7	17	15	55
<b>Closed/Failed to Renew During Legal Case</b>	37	40	46	38	28	189

**Central Abuse Hotline**

The Department of Children and Families is required under s. 415.103, F.S., to establish and maintain a central abuse hotline to receive reports, in writing or through a single statewide toll-free telephone number, of known or suspected abuse, neglect, or exploitation of a vulnerable adult<sup>57</sup> at any hour of the day or night, any day of the week.<sup>58</sup> Persons listed in s. 415.1034, F.S., who know, or have reasonable

<sup>52</sup> Section 429.14(4), F.S.

<sup>53</sup> Section 408.814, F.S.

<sup>54</sup> Section 429.14(7), F.S.

<sup>55</sup> "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired. Section 825.101(5), F.S. It does not constitute a defense to a prosecution for any violation of this chapter that the accused did not know the age of the victim. Section 825.104, F.S.

<sup>56</sup> "Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living. Section 825.101(4), F.S.

<sup>57</sup> "Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. Section 415.102(27), F.S.

<sup>58</sup> The central abuse hotline is operated by the DCF to: accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited; determine whether the allegations require an immediate, 24-hour, or next-working-day response priority; when appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter's concerns; immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline; Section 415.103(1), F.S.

cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited are required to immediately report such knowledge or suspicion to the central abuse hotline.<sup>59</sup>

### Personal Property of Residents

Facilities are required under s. 429.27(3), F.S., upon mutual consent with the resident, to provide for the safekeeping of a resident's personal effects not in excess of \$500 and funds not in excess of \$200 cash. The facility must keep complete and accurate records of all such funds and personal effects received. If a resident is absent from a facility for 24 hours or more, the facility may provide for the safekeeping of the resident's personal effects in excess of \$500.

### Long-Term Care Ombudsman Program

The Federal Older Americans Act (OAA) requires each state to create a Long-Term Care Ombudsman Program to be eligible to receive funding associated with programs under the OAA.<sup>60</sup> In Florida, the program is a statewide, volunteer-based system of district councils that protect, defend, and advocate on behalf of long-term care facility residents, including residents of nursing homes, ALFs, and adult family-care homes. The ombudsman program is administratively housed in the DOEA and is headed by the State Long-Term Care Ombudsman, who is appointed by the DOEA Secretary.<sup>61</sup> The ombudsman program is required to establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents of ALFs, nursing homes, and adult family care homes. Every resident or representative of a resident must receive, upon admission to a long-term care facility, information regarding the program and the statewide toll-free telephone number for receiving complaints.<sup>62</sup> The names or identities of the complainants or residents involved in a complaint, including any problem identified by an ombudsman council as a result of an investigation, are confidential and exempt from Florida's public records laws, unless the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure, or the disclosure is required by court order.<sup>63</sup> In addition to investigating and resolving complaints, ombudsmen conduct unannounced visits to assess the quality of care in facilities, referred to as administrative assessments.

### **Effect of Proposed Changes**

The bill amends s. 394.4574, F.S., to clarify that Medicaid prepaid behavioral health plans are responsible for enrolled state supported mental health residents and that managing entities under contract with the DCF are responsible for such residents who are not enrolled with a Medicaid prepaid behavioral health plan. This section requires a mental health resident's community living support plan be completed and provided to the administrator of the facility within 30 days of admitting a mental health resident and be updated when there is a significant change to the resident's behavioral health status. The resident's case manager must keep a 2-year record of any face-to-face interaction with the resident. Finally, this section charges the entity responsible for a mental health resident to ensure that there is adequate and consistent monitoring of the community living support plan and to report any concerns about a regulated provider failing to provide services or otherwise acting in a manner with the potential to cause harm to the resident.

The bill amends s. 400.0074, F.S., to require the administrative assessment performed by the Long-Term Care Ombudsman to be comprehensive. Further, the bill requires the local Ombudsman to conduct an exit consultation with the long-term care facility administrator.

The bill amends s. 400.0078, F.S., to require that ALFs provide information to new residents upon admission to the facility that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident right.

---

<sup>59</sup> Section 415.1034, F.S.

<sup>60</sup> 42 U.S.C. 3058, et. seq.. See also s. 400.0061(1), F.S.

<sup>61</sup> Section 400.0063, F.S.

<sup>62</sup> Section 400.0078(2), F.S.

<sup>63</sup> Section 400.0077(1)(b), F.S.

The bill amends s. 429.07, F.S., to make changes to improve the regulation of facilities with ECC and LNS specialty licenses. These changes include:

- Requiring that an ALF be licensed for 2 or more years before being issued an ECC license that is not provisional.
- Clarifying under what circumstances AHCA may deny or revoke a facility's ECC license.
- Creating a provisional ECC license for ALFs that have been licensed for less than 2 years.
- The provisional license lasts for a period of 6 months.
- The facility must inform AHCA when it has admitted one or more residents requiring ECC services.
- After the facility admits one or more ECC residents, AHCA must inspect the facility for compliance with the requirements of the ECC license.
- If the licensee demonstrates compliance with the requirements of an ECC license, AHCA must grant the facility an ECC license.
- If the licensee fails to demonstrate compliance with the requirements of an ECC license or fails to admit an ECC resident within 3 months, the licensee must immediately suspend ECC services and the provisional ECC license expires.
- Authorizing AHCA to extend a provisional ECC license for 1 month in order to complete a follow-up visit.
- Reducing monitoring visits for facilities with ECC licenses from quarterly to twice a year, and for facilities with LNS licenses from twice a year to once a year.
- Clarifying under what circumstances AHCA may waive one of the required monitoring visits for facilities with ECC licenses and also allowing AHCA to waive the required monitoring visit for facilities with an LNS license under the same conditions.

The bill amends s. 429.075, F.S., to require facilities with one or more, instead of three or more, mental health residents to obtain a LMH license.

The bill amends s. 429.14, F.S., to:

- Allow AHCA to revoke, rather than just deny, a license for a facility with a controlling interest that has, or had, a 25 percent or greater financial or ownership interest in a second facility that closed due to financial inability to operate or was the subject of other specified administrative sanctions.
- Add additional criteria under which AHCA must deny or revoke a facility's license.  
The criteria include:
  - There are 2 moratoria issued within a 2-year period.
  - The facility is cited for 2 or more class I violations arising from unrelated circumstances during the same investigation.
  - The facility is cited for 2 or more class I violations within 2 years.
- Require AHCA to impose an immediate moratorium on a facility that fails to provide AHCA with access to the facility, prohibits a regulatory inspection, denies access to records, or prohibits the confidential interview of facility staff or residents.
- Exempt a facility from the 45-day notice requirement in s. 429.28(k), F.S., if that facility is required to relocate all or some of its residents due to action by AHCA.

The bill amends s. 429.19, F.S., relating to the impositions of fines in order to reduce the discretion of AHCA and to make such penalties more predictable. Specifically, the bill would:

- Amend the dollar amount for fines at \$7,500 for class I violations, \$3,000 for class II violations. This is the midpoint of the current ranges for fines in current law.
- Multiply fine amounts by 1.5 times for facilities licensed for 100 or more beds, so that the fine is \$11,250 for class I violations and \$4,500 for class II violations.

- Allow AHCA to impose a fine on a facility for a class I violation, even if the facility corrects the violation before the AHCA conducts an investigation. Facilities can still challenge such fines through an administrative hearing pursuant to ch.120, F.S.
- Double the fines for facilities with repeat class I and class II violations.
- Amend the dollar amount for fines for class III violations, as follows:
  - \$500 for each violation in a facility licensed for 6 or fewer beds;
  - \$750 for each violation in a facility licensed for 7 to 24 beds;
  - \$1,000 for each violation in a facility licensed for 25 to 99 beds; and
  - \$1,125 for each violation in a facility licensed for 100 or more beds.
  - Current law authorizes AHCA to impose a discretionary fine of between \$500 and \$1,000 for each violation.
- Amend the dollar amount for fines for class IV violations, as follows:
  - \$100 for each violation in a facility licensed for 6 or fewer beds;
  - \$150 for each violation in a facility licensed for 7 to 24 beds;
  - \$200 for each violation in a facility licensed for 25 to 99 beds; and
  - \$225 for each violation in a facility license for 100 or more beds.
  - Current law authorizes AHCA to impose a discretionary fine of between \$100 and \$200 for each violation.
- Allow AHCA to impose a fine on facilities with repeat class III and class IV violations, regardless of correction. Current law prohibiting AHCA from assessing fines for corrected class III and IV violations continues for the first survey finding such violations.
- Fine a facility \$500 for failure to comply with background screening requirements. This fine will take the place of fines based on the class of the violation.

The bill amends s. 429.256, F.S., to allow all facility staff who have received the required training to provide several additional services in assisting with self-administration of medication.<sup>64</sup> Specifically, the additional duties are:

- Taking a prefilled insulin syringe from its place of storage and bringing it to a resident;
- Removing the cap of a nebulizer, opening the unit dose of nebulizer solution, and pouring the pre-measured dose of medication into the dispensing cup of the nebulizer;
- Assisting a resident in using a nebulizer;
- Using a glucometer to perform blood glucose checks;
- Assisting with anti-embolism stockings;
- Assisting with applying and removing an oxygen cannula;
- Assisting with the use of a continuous positive airway pressure device;

---

<sup>64</sup> Staff involved with the management of medications and assisting with the self-administration of medications under s. 429.256, F.S., must complete a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or department staff. The department shall establish by rule the minimum requirements of this additional training. Section 429.52(5), F.S. Unlicensed persons who will be providing assistance with self-administered medications must meet the training requirements pursuant to s. 429.52(5), F.S., prior to assuming this responsibility. Courses provided in fulfillment of this requirement must meet the following criteria: Training must cover state law and rule requirements with respect to the supervision, assistance, administration, and management of medications in assisted living facilities; procedures and techniques for assisting the resident with self-administration of medication including how to read a prescription label; providing the right medications to the right resident; common medications; the importance of taking medications as prescribed; recognition of side effects and adverse reactions and procedures to follow when residents appear to be experiencing side effects and adverse reactions; documentation and record keeping; and medication storage and disposal. Training shall include demonstrations of proper techniques and provide opportunities for hands-on learning through practice exercises. The training must be provided by a registered nurse or licensed pharmacist who shall issue a training certificate to a trainee who demonstrates an ability to: Read and understand a prescription label; Provide assistance with self-administration in accordance with Section 429.256, F.S., and Rule 58A-5.0185, F.A.C., including: Assist with oral dosage forms, topical dosage forms, and topical ophthalmic, otic and nasal dosage forms; Measure liquid medications, break scored tablets, and crush tablets in accordance with prescription directions; Recognize the need to obtain clarification of an "as needed" prescription order; Recognize a medication order which requires judgment or discretion, and to advise the resident, resident's health care provider or facility employer of inability to assist in the administration of such orders; Complete a medication observation record; Retrieve and store medication; and Recognize the general signs of adverse reactions to medications and report such reactions. Unlicensed persons, as defined in Section 429.256(1)(b), F.S., who provide assistance with self-administered medications and have successfully completed the initial 4 hour training, must obtain, annually, a minimum of 2 hours of continuing education training on providing assistance with self-administered medications and safe medication practices in an assisted living facility. The 2 hours of continuing education training shall only be provided by a licensed registered nurse, or a licensed pharmacist. Rule 58A-5.0191(5), F.A.C.



- Assisting with the measuring of vital signs; and
- Assisting with the use of colostomy bags.

The bill also increases the training requirements for staff that assist residents with medication from 4 to 6 hours.

The bill amends s. 429.27(3), F.S., to increase the amount of cash that a facility may provide sake-keeping of for a resident from \$200 to \$500.

The bill amends s. 429.28, F.S., to require the posted notice of a resident's rights, obligations, and prohibitions, to specify that complaints made to the ombudsman program, as well as the names and identities of the complainant and any residents involved, are confidential. This section also creates a fine of \$2,500, which is imposed if a facility cannot show good cause in state court for terminating the residency of an individual who has exercised an enumerated right.

The bill amends s. 429.34, F.S., to require certain state officials, such as Medicaid Fraud investigators and state or local fire marshals, to report any knowledge or reasonable suspicion that a vulnerable adult has been or is being abused, neglected, or exploited to the DCF central abuse hotline.

The bill provides that a facility having one or more class I violations, two or more class II violations arising from separate surveys within a 60-day period, or two or more unrelated class II violations cited during one survey be subject to an additional inspection within 6 months. The licensee must pay a fee to AHCA to cover the cost of the additional inspection.

The bill amends s. 429.41, F.S., to clarify that ALF staffing requirements for a continuing care facility or retirement community apply only to residents who receive personal limited nursing services or extended congregate care services.

The bill amends s. 429.52, F.S., to require facilities to provide a 2-hour pre-service orientation for all new facility employees who have not previously completed core training. The pre-service orientation must cover topics that help the employee provide responsible care and respond to the needs of the residents. The employee and the facility's administrator must sign a statement that the new ALF staff member has completed the pre-service orientation. The signed statement must be kept in that staff member's file. The bill clarifies that the pre-service orientation can be provided by the ALF instead of requiring that it be provided by a trainer registered with DOEA.

The bill creates a new, unnumbered section of statute which requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study of inter-surveyor reliability to determine if different surveyors consistently apply licensure standards. The bill requires OPPAGA to report its findings and make recommendations to the Governor, the President of the Senate, and the Speaker of the House by November 1, 2014.

The bill creates a new, unnumbered section of statute which provides Legislative findings that consumers need additional information in order to select an ALF. To facilitate this, the bill requires AHCA to implement a rating system for ALFs by March 1, 2015. This section also requires AHCA to create a consumer guide website, which contains information on each licensed ALF, including, but not limited to:

- The name and address of the facility;
- The number and type of licensed beds in the facility;
- The types of licenses held by the facility;
- The facility's license expiration date and status;
- Affiliations with any other organization who owns or manages more than one ALF in Florida;
- The total number of clients that the facility is licensed to serve and the most recent occupancy levels;
- The number of private and semi-private rooms offered;
- The bed-hold policy;

- The religious affiliation, if any, of the ALF;
- The languages spoken by the staff;
- Availability of nurses;
- Forms of payment accepted;
- Identification if the licensee is operating under bankruptcy protection;
- Recreational and other programs available;
- Special care units or programs offered;
- Availability of mental health services;
- Whether the facility is part of a retirement community that offers other services;
- Links to the State Long-Term Care Ombudsman Program website and the program's statewide toll-free telephone number;
- Links to the internet websites of the providers or their affiliates;
- Other relevant information currently collected by AHCA; and
- Survey and violation information including a list of the facility's violations committed during the previous 60 months, which must be updated monthly.

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 394.4574, F.S., relating to responsibilities for coordination of services for a mental health resident who resides in an assisted living facility that holds a limited mental health license.
- Section 2:** Amends s. 400.0074, F.S., relating to local ombudsman council onsite administrative assessments.
- Section 3:** Amends s. 400.0078, F.S., relating to citizen access to State Long-Term Care Ombudsman Program services.
- Section 4:** Amends s. 429.07, F.S., relating to license required; fee.
- Section 5:** Amends s. 429.075, F.S., relating to limited mental health licenses.
- Section 6:** Amends s. 429.14, F.S., relating to administrative penalties.
- Section 7:** Amends s. 429.178, F.S., relating to special care for persons with Alzheimer's disease or other related disorders.
- Section 8:** Amends s. 429.19, F.S., relating to violations; imposition of administrative fines; grounds.
- Section 9:** Amends s. 429.256, F.S., relating to assistance with self-administration of medication.
- Section 10:** Amends s. 429.27, F.S., relating to property and personal affairs of residents.
- Section 11:** Amends s. 429.28, F.S., relating to resident bill of rights.
- Section 12:** Amends s. 429.34, F.S., relating to right of entry and inspection.
- Section 13:** Amends s. 429.41, F.S., relating to rules establishing standards.
- Section 14:** Amends s. 429.52, F.S., relating to staff training and educational programs; and core educational requirements.
- Section 15:** In an unnamed section of law, requiring Office of Program Policy Analysis and Government Accountability to conduct a study of survey reliability for assisted living facilities and submit a report of its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2014.
- Section 16:** In an unnamed section of law, requiring the Agency for Health Care Administration to implement a rating system for assisted living facilities and to include certain information on their website about each licensed facility to assist consumers in selecting the best facility for themselves or their loved ones.
- Section 17:** Provides an effective date of July 1, 2014.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill amends the fines for ALFs that are cited for violations. The fines will be based on the number of licensed beds within the cited ALF. Based on the average number of citations in the last two years, the estimated fine revenue for violations would be approximately \$672,202 per year.

	Violations	Current Average Fine	Proposed Fine	Difference	Additional Revenue
<b>Class I</b>	104	\$6,585	\$7,500	\$915	\$95,160
	11	\$7,454	\$11,250	\$3,796	\$41,756
<b>Class II</b>	663	\$1,542	\$3,000	\$1,458	\$966,654
	86	\$1,843	\$4,500	\$2,657	\$228,502
<b>Class III</b>	301	\$782	\$500	-\$282	-\$84,882
	97	\$635	\$750	\$115	\$11,155
	86	\$859	\$1,000	\$141	\$12,126
	144	\$613	\$1,125	\$512	\$73,728
<b>Class IV</b>	13	\$169	\$100	-\$69	-\$897
	3	\$166	\$150	-\$16	-\$48
	1	\$100	\$225	\$125	\$125
	1	\$100	\$1,125	\$1,025	\$1,025
<b>Total Biennial Revenue</b>					\$1,344,404
<b>Total One Year Revenue</b>					\$672,202

2. Expenditures:

AHCA estimates an increase in the number of legal cases that will be generated as a result of the increased administrative penalties and fines. AHCA anticipates that an additional 143 legal cases will be created and will need two full-time equivalent Senior Attorney positions to process the additional cases. The total fiscal impact is \$159,308 for Year 1 and \$151,322 for each recurring year. AHCA estimates that the additional fines collected will exceed the cost of the two full-time equivalent positions.<sup>65</sup>

			FY 2014-2015	FY 2015-16
<b>SALARIES:</b>				
<i>Position Title</i>	<i>FTE</i>	<i>Salary Rate</i>	<i>Salary/Benefits</i>	<i>Salary/Benefits</i>
Senior Attorney	1.0	\$51,825.50	\$69,418	\$69,418
Senior Attorney	1.0	\$51,825.50	\$69,418	\$69,418
<b>EXPENSES:</b>				
Professional Staff			\$11,778	\$11,778
<b>HUMAN RESOURCE SERVICES:</b>				
FTE Positions			\$708	\$708
<b>STANDARD EXPENSE PACKAGE:</b>				
Professional Staff			\$7,986	\$0
<b>TOTAL:</b>			<b>\$159,308</b>	<b>\$151,322</b>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill revises fines used to sanction facilities with violations, but such fines can still be challenged and settled through ch. 120, F.S. Facilities with fewer than 100 beds with class I violations will now be assessed a fine of \$7,500 (current law allows the fine to be between \$5,000 and \$10,000). Some facilities will see a reduction in their fine, while other will see an increase. The range for fines for class II violations are replaced with an amount equal to the midpoint of the range. Fines for class III and IV violations will be based on a four-tier fixed amount. Fines for facilities with 100 beds or more will see higher fines.

Facilities would also be assessed a fine for class I violations even if they are corrected when the AHCA visits the facility. Facilities violating the background screening requirements would be levied a fine of \$500. Currently, facilities are cited for a class II or III violation for not screening the background of facility staff so the fine amount can vary. All fines are subject to challenge through an administrative hearing under ch. 120, F.S.

Facilities would be required to provide new employees that have not already gone through the ALF core training program with a 2 hour pre-service training session before they work with residents. The cost of this training is not expected to be significant and in many cases is already provided.

Facilities with specialty licenses that meet licensure standards would see fewer monitoring visits from the AHCA. This will positively impact the facilities as they will have less interruption of staff time due to such visits.

Facilities with any state supported mentally ill residents would have to meet limited mental health licensure requirements with one or more mental health residents. Facilities with one or two state supported mentally ill residents that do not meet these requirements may see increased costs to comply. Some facilities with one or two such residents however, may already meet the requirements for a limited mental health license.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 11, 2014, the Health Innovation Subcommittee adopted four amendments and reported the bill favorably as a committee substitute. The amendments made the following changes to the bill:

- Revised the requirement for a case manager to submit a community living support plan “upon the resident’s admission” to “within 30 days of admission” for a mental health resident of an ALF with a limited mental health license.
- Made a technical change to require case managers of mental health residents to “implement” rather than “enforce” community living support plans.
- Revised the structure of fines associated with class III and class IV violations to be based on a four tier system.
- Deleted the provision authorizing the Agency for Health Care Administration to double fines for class III or class IV violations if a facility was previously cited for one or more class III or class IV violations during the agency’s last two licensure inspections for the same regulatory violation.
- Increased the amount of cash that a facility may provide sake-keeping of for a resident from \$200 to \$500.

The analysis is drafted to the committee substitute as passed by the Health Innovation Subcommittee.

1 A bill to be entitled  
 2 An act relating to assisted living facilities;  
 3 amending s. 394.4574, F.S.; providing that Medicaid  
 4 managed care plans are responsible for enrolled mental  
 5 health residents; providing that managing entities  
 6 under contract with the Department of Children and  
 7 Families are responsible for mental health residents  
 8 who are not enrolled with a Medicaid managed care  
 9 plan; deleting a provision to conform to changes made  
 10 by the act; requiring that the community living  
 11 support plan be completed and provided to the  
 12 administrator of a facility within a specified period  
 13 after the resident's admission; requiring the  
 14 community living support plan to be updated when there  
 15 is a significant change to the mental health  
 16 resident's behavioral health; requiring the case  
 17 manager assigned to a mental health resident of an  
 18 assisted living facility that holds a limited mental  
 19 health license to keep a record of the date and time  
 20 of face-to-face interactions with the resident and to  
 21 make the record available to the responsible entity  
 22 for inspection; requiring that the record be  
 23 maintained for a specified period; requiring the  
 24 responsible entity to ensure that there is adequate  
 25 and consistent monitoring and implementation of  
 26 community living support plans and cooperative

27 | agreements and that concerns are reported to the  
 28 | appropriate regulatory oversight organization under  
 29 | certain circumstances; amending s. 400.0074, F.S.;  
 30 | requiring that an administrative assessment conducted  
 31 | by a local council be comprehensive in nature and  
 32 | focus on factors affecting the rights, health, safety,  
 33 | and welfare of nursing home residents; requiring a  
 34 | local council to conduct an exit consultation with the  
 35 | facility administrator or administrator designee to  
 36 | discuss issues and concerns in areas affecting the  
 37 | rights, health, safety, and welfare of residents and  
 38 | make recommendations for improvement; amending s.  
 39 | 400.0078, F.S.; requiring that a resident or a  
 40 | representative of a resident of a long-term care  
 41 | facility be informed that retaliatory action cannot be  
 42 | taken against a resident for presenting grievances or  
 43 | for exercising any other resident right; amending s.  
 44 | 429.07, F.S.; requiring that an extended congregate  
 45 | care license be issued to certain facilities that have  
 46 | been licensed as assisted living facilities under  
 47 | certain circumstances and authorizing the issuance of  
 48 | such license if a specified condition is met;  
 49 | providing the purpose of an extended congregate care  
 50 | license; providing that the initial extended  
 51 | congregate care license of an assisted living facility  
 52 | is provisional under certain circumstances; requiring

53 a licensee to notify the Agency for Health Care  
 54 Administration if it accepts a resident who qualifies  
 55 for extended congregate care services; requiring the  
 56 agency to inspect the facility for compliance with the  
 57 requirements of an extended congregate care license;  
 58 requiring the issuance of an extended congregate care  
 59 license under certain circumstances; requiring the  
 60 licensee to immediately suspend extended congregate  
 61 care services under certain circumstances; requiring a  
 62 registered nurse representing the agency to visit the  
 63 facility at least twice a year, rather than quarterly,  
 64 to monitor residents who are receiving extended  
 65 congregate care services; authorizing the agency to  
 66 waive one of the required yearly monitoring visits  
 67 under certain circumstances; authorizing the agency to  
 68 deny or revoke a facility's extended congregate care  
 69 license; requiring a registered nurse representing the  
 70 agency to visit the facility at least annually, rather  
 71 than twice a year, to monitor residents who are  
 72 receiving limited nursing services; providing that  
 73 such monitoring visits may be conducted in conjunction  
 74 with other agency inspections; authorizing the agency  
 75 to waive the required yearly monitoring visit for a  
 76 facility that is licensed to provide limited nursing  
 77 services under certain circumstances; amending s.  
 78 429.075, F.S.; requiring an assisted living facility



79 | that serves one or more mental health residents to  
 80 | obtain a limited mental health license; amending s.  
 81 | 429.14, F.S.; revising the circumstances under which  
 82 | the agency may deny, revoke, or suspend the license of  
 83 | an assisted living facility and impose an  
 84 | administrative fine; requiring the agency to deny or  
 85 | revoke the license of an assisted living facility  
 86 | under certain circumstances; requiring the agency to  
 87 | impose an immediate moratorium on the license of an  
 88 | assisted living facility under certain circumstances;  
 89 | deleting a provision requiring the agency to provide a  
 90 | list of facilities with denied, suspended, or revoked  
 91 | licenses to the Department of Business and  
 92 | Professional Regulation; exempting a facility from the  
 93 | 45-day notice requirement if it is required to  
 94 | relocate some or all of its residents; amending s.  
 95 | 429.178, F.S.; conforming cross-references; amending  
 96 | s. 429.19, F.S.; revising the amounts and uses of  
 97 | administrative fines; requiring the agency to levy a  
 98 | fine for violations that are corrected before an  
 99 | inspection if noncompliance occurred within a  
 100 | specified period of time; deleting factors that the  
 101 | agency is required to consider in determining  
 102 | penalties and fines; amending s. 429.256, F.S.;  
 103 | revising the term "assistance with self-administration  
 104 | of medication" as it relates to the Assisted Living

105 Facilities Act; amending s. 429.27, F.S.; revising the  
 106 amount of cash for which a facility may provide  
 107 safekeeping for a resident; amending s. 429.28, F.S.;  
 108 providing notice requirements to inform facility  
 109 residents that the identity of the resident and  
 110 complainant in any complaint made to the State Long-  
 111 Term Care Ombudsman Program or a local long-term care  
 112 ombudsman council is confidential and that retaliatory  
 113 action cannot be taken against a resident for  
 114 presenting grievances or for exercising any other  
 115 resident right; requiring that a facility that  
 116 terminates an individual's residency after the filing  
 117 of a complaint be fined if good cause is not shown for  
 118 the termination; amending s. 429.34, F.S.; requiring  
 119 certain persons to report elder abuse in assisted  
 120 living facilities; requiring the agency to regularly  
 121 inspect every licensed assisted living facility;  
 122 requiring the agency to conduct more frequent  
 123 inspections under certain circumstances; requiring the  
 124 licensee to pay a fee for the cost of additional  
 125 inspections; requiring the agency to annually adjust  
 126 the fee; amending s. 429.41, F.S.; providing that  
 127 certain staffing requirements apply only to residents  
 128 in continuing care facilities who are receiving the  
 129 relevant service; amending s. 429.52, F.S.; requiring  
 130 each newly hired employee of an assisted living

131 facility to attend a preservice orientation provided  
 132 by the assisted living facility; requiring the  
 133 employee and administrator to sign a statement that  
 134 the employee completed the required pre-service  
 135 orientation and keep the signed statement in the  
 136 employee's personnel record; requiring additional  
 137 hours of training for assistance with medication;  
 138 conforming a cross-reference; creating s. 429.55,  
 139 F.S.; requiring the Office of Program Policy Analysis  
 140 and Government Accountability to study the reliability  
 141 of facility surveys and submit to the Governor and the  
 142 Legislature its findings and recommendations;  
 143 requiring the agency to implement a rating system of  
 144 assisted living facilities by a specified date, adopt  
 145 rules, and create content for the agency's website  
 146 that makes available to consumers information  
 147 regarding assisted living facilities; providing  
 148 criteria for the content; providing an effective date.

149

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

151

152 Section 1. Section 394.4574, Florida Statutes, is amended  
 153 to read:

154 394.4574 ~~Department~~ Responsibilities for coordination of  
 155 services for a mental health resident who resides in an assisted  
 156 living facility that holds a limited mental health license.-

157 (1) As used in this section, the term "mental health  
 158 resident," ~~for purposes of this section,~~ means an individual who  
 159 receives social security disability income due to a mental  
 160 disorder as determined by the Social Security Administration or  
 161 receives supplemental security income due to a mental disorder  
 162 as determined by the Social Security Administration and receives  
 163 optional state supplementation.

164 (2) Medicaid managed care plans are responsible for  
 165 Medicaid enrolled mental health residents, and managing entities  
 166 under contract with the department are responsible for mental  
 167 health residents who are not enrolled in a Medicaid health plan.  
 168 A Medicaid managed care plan or a managing entity, as  
 169 appropriate, shall ~~The department must~~ ensure that:

170 (a) A mental health resident has been assessed by a  
 171 psychiatrist, clinical psychologist, clinical social worker, or  
 172 psychiatric nurse, or an individual who is supervised by one of  
 173 these professionals, and determined to be appropriate to reside  
 174 in an assisted living facility. The documentation must be  
 175 provided to the administrator of the facility within 30 days  
 176 after the mental health resident has been admitted to the  
 177 facility. An evaluation completed upon discharge from a state  
 178 mental hospital meets the requirements of this subsection  
 179 related to appropriateness for placement as a mental health  
 180 resident if it was completed within 90 days before ~~prior to~~  
 181 admission to the facility.

182 (b) A cooperative agreement, as required in s. 429.075, is

183 developed by ~~between~~ the mental health care services provider  
 184 that serves a mental health resident and the administrator of  
 185 the assisted living facility with a limited mental health  
 186 license in which the mental health resident is living. ~~Any~~  
 187 ~~entity that provides Medicaid prepaid health plan services shall~~  
 188 ~~ensure the appropriate coordination of health care services with~~  
 189 ~~an assisted living facility in cases where a Medicaid recipient~~  
 190 ~~is both a member of the entity's prepaid health plan and a~~  
 191 ~~resident of the assisted living facility. If the entity is at~~  
 192 ~~risk for Medicaid targeted case management and behavioral health~~  
 193 ~~services, the entity shall inform the assisted living facility~~  
 194 ~~of the procedures to follow should an emergent condition arise.~~

195 (c) The community living support plan, as defined in s.  
 196 429.02, has been prepared by a mental health resident and his or  
 197 her ~~a~~ mental health case manager ~~of that resident~~ in  
 198 consultation with the administrator of the facility or the  
 199 administrator's designee. The plan must be completed and  
 200 provided to the administrator of the assisted living facility  
 201 with a limited mental health license in which the mental health  
 202 resident lives within 30 days after the resident's admission.  
 203 The support plan and the agreement may be in one document.

204 (d) The assisted living facility with a limited mental  
 205 health license is provided with documentation that the  
 206 individual meets the definition of a mental health resident.

207 (e) The mental health services provider assigns a case  
 208 manager to each mental health resident for whom the entity is

209 responsible ~~who lives in an assisted living facility with a~~  
 210 ~~limited mental health license.~~ The case manager shall coordinate  
 211 ~~is responsible for coordinating~~ the development ~~of~~ and  
 212 implementation of the community living support plan defined in  
 213 s. 429.02. The plan must be updated at least annually, or when  
 214 there is a significant change in the resident's behavioral  
 215 health status, such as an inpatient admission or a change in  
 216 medication, level of service, or residence. Each case manager  
 217 shall keep a record of the date and time of any face-to-face  
 218 interaction with the resident and make the record available to  
 219 the responsible entity for inspection. The record must be  
 220 retained for at least 2 years after the date of the most recent  
 221 interaction.

222 (f) Adequate and consistent monitoring and implementation  
 223 of community living support plans and cooperative agreements are  
 224 conducted by the resident's case manager.

225 (g) Concerns are reported to the appropriate regulatory  
 226 oversight organization if a regulated provider fails to deliver  
 227 appropriate services or otherwise acts in a manner that has the  
 228 potential to result in harm to the resident.

229 (3) The Secretary of Children and Families ~~Family~~  
 230 ~~Services~~, in consultation with the Agency for Health Care  
 231 Administration, shall ~~annually~~ require each district  
 232 administrator to develop, with community input, a detailed  
 233 annual plan that demonstrates ~~detailed plans that demonstrate~~  
 234 how the district will ensure the provision of state-funded

235 mental health and substance abuse treatment services to  
 236 residents of assisted living facilities that hold a limited  
 237 mental health license. This plan ~~These plans~~ must be consistent  
 238 with the substance abuse and mental health district plan  
 239 developed pursuant to s. 394.75 and must address case management  
 240 services; access to consumer-operated drop-in centers; access to  
 241 services during evenings, weekends, and holidays; supervision of  
 242 the clinical needs of the residents; and access to emergency  
 243 psychiatric care.

244 Section 2. Subsection (1) of section 400.0074, Florida  
 245 Statutes, is amended, and paragraph (h) is added to subsection  
 246 (2) of that section, to read:

247 400.0074 Local ombudsman council onsite administrative  
 248 assessments.—

249 (1) In addition to any specific investigation conducted  
 250 pursuant to a complaint, the local council shall conduct, at  
 251 least annually, an onsite administrative assessment of each  
 252 nursing home, assisted living facility, and adult family-care  
 253 home within its jurisdiction. This administrative assessment  
 254 must be comprehensive in nature and must ~~shall~~ focus on factors  
 255 affecting residents' ~~the~~ rights, health, safety, and welfare ~~of~~  
 256 ~~the residents~~. Each local council is encouraged to conduct a  
 257 similar onsite administrative assessment of each additional  
 258 long-term care facility within its jurisdiction.

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

261        (h) The local council shall conduct an exit consultation  
 262 with the facility administrator or administrator designee to  
 263 discuss issues and concerns in areas affecting residents'  
 264 rights, health, safety, and welfare and, if needed, make  
 265 recommendations for improvement.

266        Section 3. Subsection (2) of section 400.0078, Florida  
 267 Statutes, is amended to read:

268        400.0078 Citizen access to State Long-Term Care Ombudsman  
 269 Program services.—

270        (2) ~~Every resident or representative of a resident shall~~  
 271 ~~receive,~~ Upon admission to a long-term care facility, each  
 272 resident or representative of a resident must receive  
 273 information regarding the purpose of the State Long-Term Care  
 274 Ombudsman Program, the statewide toll-free telephone number for  
 275 receiving complaints, information that retaliatory action cannot  
 276 be taken against a resident for presenting grievances or for  
 277 exercising any other resident right, and other relevant  
 278 information regarding how to contact the program. Each resident  
 279 or his or her representative ~~Residents or their representatives~~  
 280 must be furnished additional copies of this information upon  
 281 request.

282        Section 4. Paragraphs (b) and (c) of subsection (3) of  
 283 section 429.07, Florida Statutes, are amended to read:

284        429.07 License required; fee.—

285        (3) In addition to the requirements of s. 408.806, each  
 286 license granted by the agency must state the type of care for



287 | which the license is granted. Licenses shall be issued for one  
 288 | or more of the following categories of care: standard, extended  
 289 | congregate care, limited nursing services, or limited mental  
 290 | health.

291 |         (b) An extended congregate care license shall be issued to  
 292 | each facility that has been licensed as an assisted living  
 293 | facility for 2 or more years and that provides services  
 294 | ~~facilities providing~~, directly or through contract, ~~services~~  
 295 | beyond those authorized in paragraph (a), including services  
 296 | performed by persons licensed under part I of chapter 464 and  
 297 | supportive services, as defined by rule, to persons who would  
 298 | otherwise be disqualified from continued residence in a facility  
 299 | licensed under this part. An extended congregate care license  
 300 | may be issued to a facility that has a provisional extended  
 301 | congregate care license and meets the requirements for licensure  
 302 | under subparagraph 2. The primary purpose of extended congregate  
 303 | care services is to allow residents the option of remaining in a  
 304 | familiar setting from which they would otherwise be disqualified  
 305 | for continued residency as they become more impaired. A facility  
 306 | licensed to provide extended congregate care services may also  
 307 | admit an individual who exceeds the admission criteria for a  
 308 | facility with a standard license, if he or she is determined  
 309 | appropriate for admission to the extended congregate care  
 310 | facility.

311 |         1. In order for extended congregate care services to be  
 312 | provided, the agency must first determine that all requirements

313 established in law and rule are met and must specifically  
 314 designate, on the facility's license, that such services may be  
 315 provided and whether the designation applies to all or part of  
 316 the facility. This ~~Such~~ designation may be made at the time of  
 317 initial licensure or relicensure, or upon request in writing by  
 318 a licensee under this part and part II of chapter 408. The  
 319 notification of approval or the denial of the request shall be  
 320 made in accordance with part II of chapter 408. Each existing  
 321 facility that qualifies ~~facilities qualifying~~ to provide  
 322 extended congregate care services must have maintained a  
 323 standard license and may not have been subject to administrative  
 324 sanctions during the previous 2 years, or since initial  
 325 licensure if the facility has been licensed for less than 2  
 326 years, for any of the following reasons:

- 327 a. A class I or class II violation;
- 328 b. Three or more repeat or recurring class III violations  
 329 of identical or similar resident care standards from which a  
 330 pattern of noncompliance is found by the agency;
- 331 c. Three or more class III violations that were not  
 332 corrected in accordance with the corrective action plan approved  
 333 by the agency;
- 334 d. Violation of resident care standards which results in  
 335 requiring the facility to employ the services of a consultant  
 336 pharmacist or consultant dietitian;
- 337 e. Denial, suspension, or revocation of a license for  
 338 another facility licensed under this part in which the applicant

339 | for an extended congregate care license has at least 25 percent  
 340 | ownership interest; or

341 |       f. Imposition of a moratorium pursuant to this part or  
 342 | part II of chapter 408 or initiation of injunctive proceedings.

343 |

344 | The agency may deny or revoke a facility's extended congregate  
 345 | care license for not meeting the criteria for an extended  
 346 | congregate care license as provided in this subparagraph.

347 |       2. If an assisted living facility has been licensed for  
 348 | less than 2 years, the initial extended congregate care license  
 349 | must be provisional and may not exceed 6 months. Within the  
 350 | first 3 months after the provisional license is issued, the  
 351 | licensee shall notify the agency, in writing, when it has  
 352 | admitted at least one extended congregate care resident, after  
 353 | which an unannounced inspection shall be made to determine  
 354 | compliance with requirements of an extended congregate care  
 355 | license. Failure to admit an extended congregate care resident  
 356 | within the first 3 months shall render the extended congregate  
 357 | care license void. A licensee with a provisional extended  
 358 | congregate care license that demonstrates compliance with all of  
 359 | the requirements of an extended congregate care license during  
 360 | the inspection shall be issued an extended congregate care  
 361 | license. In addition to sanctions authorized under this part, if  
 362 | violations are found during the inspection and the licensee  
 363 | fails to demonstrate compliance with all assisted living  
 364 | requirements during a followup inspection, the licensee shall

365 immediately suspend extended congregate care services, and the  
 366 provisional extended congregate care license expires. The agency  
 367 may extend the provisional license for not more than 1 month in  
 368 order to complete a followup visit.

369 3.2. A facility that is licensed to provide extended  
 370 congregate care services shall maintain a written progress  
 371 report on each person who receives services which describes the  
 372 type, amount, duration, scope, and outcome of services that are  
 373 rendered and the general status of the resident's health. A  
 374 registered nurse, or appropriate designee, representing the  
 375 agency shall visit the facility at least twice a year ~~quarterly~~  
 376 to monitor residents who are receiving extended congregate care  
 377 services and to determine if the facility is in compliance with  
 378 this part, part II of chapter 408, and relevant rules. One of  
 379 the visits may be in conjunction with the regular survey. The  
 380 monitoring visits may be provided through contractual  
 381 arrangements with appropriate community agencies. A registered  
 382 nurse shall serve as part of the team that inspects the  
 383 facility. The agency may waive one of the required yearly  
 384 monitoring visits for a facility that has:

385 a. Held an extended congregate care license for at least  
 386 24 months; ~~been licensed for at least 24 months to provide~~  
 387 ~~extended congregate care services, if, during the inspection,~~  
 388 ~~the registered nurse determines that extended congregate care~~  
 389 ~~services are being provided appropriately, and if the facility~~  
 390 ~~has~~

391           b. No class I or class II violations and no uncorrected  
 392 class III violations; and-

393           c. No ombudsman council complaints that resulted in a  
 394 citation for licensure ~~The agency must first consult with the~~  
 395 ~~long-term care ombudsman council for the area in which the~~  
 396 ~~facility is located to determine if any complaints have been~~  
 397 ~~made and substantiated about the quality of services or care.~~  
 398 ~~The agency may not waive one of the required yearly monitoring~~  
 399 ~~visits if complaints have been made and substantiated.~~

400           4.3. A facility that is licensed to provide extended  
 401 congregate care services must:

402           a. Demonstrate the capability to meet unanticipated  
 403 resident service needs.

404           b. Offer a physical environment that promotes a homelike  
 405 setting, provides for resident privacy, promotes resident  
 406 independence, and allows sufficient congregate space as defined  
 407 by rule.

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

411           d. Adopt and follow policies and procedures that maximize  
 412 resident independence, dignity, choice, and decisionmaking to  
 413 permit residents to age in place, so that moves due to changes  
 414 in functional status are minimized or avoided.

415           e. Allow residents or, if applicable, a resident's  
 416 representative, designee, surrogate, guardian, or attorney in

417 fact to make a variety of personal choices, participate in  
 418 developing service plans, and share responsibility in  
 419 decisionmaking.

420 f. Implement the concept of managed risk.

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

423 h. In addition to the training mandated in s. 429.52,  
 424 provide specialized training as defined by rule for facility  
 425 staff.

426 5.4. A facility that is licensed to provide extended  
 427 congregate care services is exempt from the criteria for  
 428 continued residency set forth in rules adopted under s. 429.41.  
 429 A licensed facility must adopt its own requirements within  
 430 guidelines for continued residency set forth by rule. However,  
 431 the facility may not serve residents who require 24-hour nursing  
 432 supervision. A licensed facility that provides extended  
 433 congregate care services must also provide each resident with a  
 434 written copy of facility policies governing admission and  
 435 retention.

436 ~~5. The primary purpose of extended congregate care~~  
 437 ~~services is to allow residents, as they become more impaired,~~  
 438 ~~the option of remaining in a familiar setting from which they~~  
 439 ~~would otherwise be disqualified for continued residency. A~~  
 440 ~~facility licensed to provide extended congregate care services~~  
 441 ~~may also admit an individual who exceeds the admission criteria~~  
 442 ~~for a facility with a standard license, if the individual is~~

443 ~~determined appropriate for admission to the extended congregate~~  
 444 ~~care facility.~~

445 6. Before the admission of an individual to a facility  
 446 licensed to provide extended congregate care services, the  
 447 individual must undergo a medical examination as provided in s.  
 448 429.26(4) and the facility must develop a preliminary service  
 449 plan for the individual.

450 7. If ~~When~~ a facility can no longer provide or arrange for  
 451 services in accordance with the resident's service plan and  
 452 needs and the facility's policy, the facility must ~~shall~~ make  
 453 arrangements for relocating the person in accordance with s.  
 454 429.28(1)(k).

455 ~~8. Failure to provide extended congregate care services~~  
 456 ~~may result in denial of extended congregate care license~~  
 457 ~~renewal.~~

458 (c) A limited nursing services license shall be issued to  
 459 a facility that provides services beyond those authorized in  
 460 paragraph (a) and as specified in this paragraph.

461 1. In order for limited nursing services to be provided in  
 462 a facility licensed under this part, the agency must first  
 463 determine that all requirements established in law and rule are  
 464 met and must specifically designate, on the facility's license,  
 465 that such services may be provided. This ~~Such~~ designation may be  
 466 made at the time of initial licensure or licensure renewal  
 467 ~~relicensure~~, or upon request in writing by a licensee under this  
 468 part and part II of chapter 408. Notification of approval or

469 denial of such request shall be made in accordance with part II  
 470 of chapter 408. An existing facility that qualifies ~~facilities~~  
 471 ~~qualifying~~ to provide limited nursing services must ~~shall~~ have  
 472 maintained a standard license and may not have been subject to  
 473 administrative sanctions that affect the health, safety, and  
 474 welfare of residents for the previous 2 years or since initial  
 475 licensure if the facility has been licensed for less than 2  
 476 years.

477 2. A facility ~~Facilities~~ that is ~~are~~ licensed to provide  
 478 limited nursing services shall maintain a written progress  
 479 report on each person who receives such nursing services. The  
 480 ~~which~~ report must describe ~~describes~~ the type, amount, duration,  
 481 scope, and outcome of services that are rendered and the general  
 482 status of the resident's health. A registered nurse representing  
 483 the agency shall visit the facility ~~such facilities~~ at least  
 484 annually ~~twice a year~~ to monitor residents who are receiving  
 485 limited nursing services and to determine if the facility is in  
 486 compliance with applicable provisions of this part, part II of  
 487 chapter 408, and related rules. The monitoring visits may be  
 488 provided through contractual arrangements with appropriate  
 489 community agencies. A registered nurse shall also serve as part  
 490 of the team that inspects such facility. Visits may be in  
 491 conjunction with other agency inspections. The agency may waive  
 492 the required yearly monitoring visit for a facility that has:

- 493 a. Had a limited nursing services license for at least 24  
 494 months;



495 b. No class I or class II violations and no uncorrected  
 496 class III violations; and

497 c. No ombudsman council complaints that resulted in a  
 498 citation for licensure.

499 3. A person who receives limited nursing services under  
 500 this part must meet the admission criteria established by the  
 501 agency for assisted living facilities. When a resident no longer  
 502 meets the admission criteria for a facility licensed under this  
 503 part, arrangements for relocating the person shall be made in  
 504 accordance with s. 429.28(1)(k), unless the facility is licensed  
 505 to provide extended congregate care services.

506 Section 5. Section 429.075, Florida Statutes, is amended  
 507 to read:

508 429.075 Limited mental health license.—An assisted living  
 509 facility that serves one ~~three~~ or more mental health residents  
 510 must obtain a limited mental health license.

511 (1) To obtain a limited mental health license, a facility  
 512 must hold a standard license as an assisted living facility,  
 513 must not have any current uncorrected ~~deficiencies or~~  
 514 violations, and must ensure that, within 6 months after  
 515 receiving a limited mental health license, the facility  
 516 administrator and the staff of the facility who are in direct  
 517 contact with mental health residents must complete training of  
 518 no less than 6 hours related to their duties. This ~~Such~~  
 519 designation may be made at the time of initial licensure or  
 520 relicensure or upon request in writing by a licensee under this

521 part and part II of chapter 408. Notification of approval or  
 522 denial of such request shall be made in accordance with this  
 523 part, part II of chapter 408, and applicable rules. This  
 524 training must ~~will~~ be provided by or approved by the Department  
 525 of Children and Families ~~Family Services~~.

526 (2) A facility that is ~~Facilities~~ licensed to provide  
 527 services to mental health residents must ~~shall~~ provide  
 528 appropriate supervision and staffing to provide for the health,  
 529 safety, and welfare of such residents.

530 (3) A facility that has a limited mental health license  
 531 must:

532 (a) Have a copy of each mental health resident's community  
 533 living support plan and the cooperative agreement with the  
 534 mental health care services provider. The support plan and the  
 535 agreement may be combined.

536 (b) Have documentation ~~that is~~ provided by the Department  
 537 of Children and Families ~~Family Services~~ that each mental health  
 538 resident has been assessed and determined to be able to live in  
 539 the community in an assisted living facility that has ~~with~~ a  
 540 limited mental health license.

541 (c) Make the community living support plan available for  
 542 inspection by the resident, the resident's legal guardian or  
 543 ~~the resident's~~ health care surrogate, and other individuals who  
 544 have a lawful basis for reviewing this document.

545 (d) Assist the mental health resident in carrying out the  
 546 activities identified in the individual's community living

547 support plan.

548 (4) A facility that has ~~with~~ a limited mental health  
 549 license may enter into a cooperative agreement with a private  
 550 mental health provider. For purposes of the limited mental  
 551 health license, the private mental health provider may act as  
 552 the case manager.

553 Section 6. Section 429.14, Florida Statutes, is amended to  
 554 read:

555 429.14 Administrative penalties.—

556 (1) In addition to the requirements of part II of chapter  
 557 408, the agency may deny, revoke, and suspend any license issued  
 558 under this part and impose an administrative fine in the manner  
 559 provided in chapter 120 against a licensee for a violation of  
 560 any provision of this part, part II of chapter 408, or  
 561 applicable rules, or for any of the following actions by a  
 562 licensee, ~~for the actions of~~ any person subject to level 2  
 563 background screening under s. 408.809, or ~~for the actions of~~ any  
 564 facility staff ~~employee~~:

565 (a) An intentional or negligent act seriously affecting  
 566 the health, safety, or welfare of a resident of the facility.

567 (b) A ~~The~~ determination by the agency that the owner lacks  
 568 the financial ability to provide continuing adequate care to  
 569 residents.

570 (c) Misappropriation or conversion of the property of a  
 571 resident of the facility.

572 (d) Failure to follow the criteria and procedures provided

573 under part I of chapter 394 relating to the transportation,  
 574 voluntary admission, and involuntary examination of a facility  
 575 resident.

576 (e) A citation ~~for~~ of any of the following violations  
 577 ~~deficiencies~~ as specified in s. 429.19:

- 578 1. One or more cited class I violations ~~deficiencies~~.
  - 579 2. Three or more cited class II violations ~~deficiencies~~.
  - 580 3. Five or more cited class III violations ~~deficiencies~~
- 581 that have been cited on a single survey and have not been  
 582 corrected within the times specified.

583 (f) Failure to comply with the background screening  
 584 standards of this part, s. 408.809(1), or chapter 435.

585 (g) Violation of a moratorium.

586 (h) Failure of the license applicant, the licensee during  
 587 relicensure, or a licensee that holds a provisional license to  
 588 meet the minimum license requirements of this part, or related  
 589 rules, at the time of license application or renewal.

590 (i) An intentional or negligent life-threatening act in  
 591 violation of the uniform firesafety standards for assisted  
 592 living facilities or other firesafety standards which ~~that~~  
 593 threatens the health, safety, or welfare of a resident of a  
 594 facility, as communicated to the agency by the local authority  
 595 having jurisdiction or the State Fire Marshal.

596 (j) Knowingly operating any unlicensed facility or  
 597 providing without a license any service that must be licensed  
 598 under this chapter or chapter 400.

599 (k) Any act constituting a ground upon which application  
 600 for a license may be denied.

601 (2) Upon notification by the local authority having  
 602 jurisdiction or by the State Fire Marshal, the agency may deny  
 603 or revoke the license of an assisted living facility that fails  
 604 to correct cited fire code violations that affect or threaten  
 605 the health, safety, or welfare of a resident of a facility.

606 (3) The agency may deny or revoke a license of an ~~to any~~  
 607 applicant or controlling interest as defined in part II of  
 608 chapter 408 which has or had a 25 percent ~~25-percent~~ or greater  
 609 financial or ownership interest in any other facility that is  
 610 licensed under this part, or in any entity licensed by this  
 611 state or another state to provide health or residential care, if  
 612 that ~~which~~ facility or entity during the 5 years prior to the  
 613 application for a license closed due to financial inability to  
 614 operate; had a receiver appointed or a license denied,  
 615 suspended, or revoked; was subject to a moratorium; or had an  
 616 injunctive proceeding initiated against it.

617 (4) The agency shall deny or revoke the license of an  
 618 assisted living facility if:

619 (a) There are two moratoria, issued pursuant to this part  
 620 or part II of chapter 408, within a 2-year period which are  
 621 imposed by final order;

622 (b) The facility is cited for two or more class I  
 623 violations arising from unrelated circumstances during the same  
 624 survey or investigation; or

625        (c) The facility is cited for two or more class I  
 626 violations arising from separate surveys or investigations  
 627 within a 2-year period ~~that has two or more class I violations~~  
 628 ~~that are similar or identical to violations identified by the~~  
 629 ~~agency during a survey, inspection, monitoring visit, or~~  
 630 ~~complaint investigation occurring within the previous 2 years.~~

631        (5) An action taken by the agency to suspend, deny, or  
 632 revoke a facility's license under this part or part II of  
 633 chapter 408, in which the agency claims that the facility owner  
 634 or an employee of the facility has threatened the health,  
 635 safety, or welfare of a resident of the facility, must be heard  
 636 by the Division of Administrative Hearings of the Department of  
 637 Management Services within 120 days after receipt of the  
 638 facility's request for a hearing, unless that time limitation is  
 639 waived by both parties. The administrative law judge shall ~~must~~  
 640 render a decision within 30 days after receipt of a proposed  
 641 recommended order.

642        (6) As provided under s. 408.814, the agency shall impose  
 643 an immediate moratorium on an assisted living facility that  
 644 fails to provide the agency with access to the facility or  
 645 prohibits the agency from conducting a regulatory inspection.  
 646 The licensee may not restrict agency staff from accessing and  
 647 copying records or from conducting confidential interviews with  
 648 facility staff or any individual who receives services from the  
 649 facility ~~provide to the Division of Hotels and Restaurants of~~  
 650 ~~the Department of Business and Professional Regulation, on a~~

651 ~~monthly basis, a list of those assisted living facilities that~~  
 652 ~~have had their licenses denied, suspended, or revoked or that~~  
 653 ~~are involved in an appellate proceeding pursuant to s. 120.60~~  
 654 ~~related to the denial, suspension, or revocation of a license.~~

655 (7) Agency notification of a license suspension or  
 656 revocation, or denial of a license renewal, shall be posted and  
 657 visible to the public at the facility.

658 (8) If a facility is required to relocate some or all of  
 659 its residents due to agency action, that facility is exempt from  
 660 the 45-days' notice requirement imposed under s. 429.28(1)(k).  
 661 This subsection does not exempt the facility from any deadlines  
 662 for corrective action set by the agency.

663 Section 7. Paragraphs (a) and (b) of subsection (2) of  
 664 section 429.178, Florida Statutes, are amended to read:

665 429.178 Special care for persons with Alzheimer's disease  
 666 or other related disorders.—

667 (2)(a) An individual who is employed by a facility that  
 668 provides special care for residents who have ~~with~~ Alzheimer's  
 669 disease or other related disorders, and who has regular contact  
 670 with such residents, must complete up to 4 hours of initial  
 671 dementia-specific training developed or approved by the  
 672 department. The training must ~~shall~~ be completed within 3 months  
 673 after beginning employment and satisfy ~~shall satisfy~~ the core  
 674 training requirements of s. 429.52(3)(g) ~~429.52(2)(g)~~.

675 (b) A direct caregiver who is employed by a facility that  
 676 provides special care for residents who have ~~with~~ Alzheimer's

677 disease or other related disorders, and ~~who~~ provides direct care  
 678 to such residents, must complete the required initial training  
 679 and 4 additional hours of training developed or approved by the  
 680 department. The training must ~~shall~~ be completed within 9 months  
 681 after beginning employment and satisfy ~~shall satisfy~~ the core  
 682 training requirements of s. 429.52(3)(g) ~~429.52(2)(g)~~.

683 Section 8. Section 429.19, Florida Statutes, is amended to  
 684 read:

685 429.19 Violations; imposition of administrative fines;  
 686 grounds.—

687 (1) In addition to the requirements of part II of chapter  
 688 408, the agency shall impose an administrative fine in the  
 689 manner provided in chapter 120 for the violation of any  
 690 provision of this part, part II of chapter 408, and applicable  
 691 rules by an assisted living facility, for the actions of any  
 692 person subject to level 2 background screening under s. 408.809,  
 693 for the actions of any facility employee, or for an intentional  
 694 or negligent act seriously affecting the health, safety, or  
 695 welfare of a resident of the facility.

696 (2) Each violation of this part and adopted rules must  
 697 ~~shall~~ be classified according to the nature of the violation and  
 698 the gravity of its probable effect on facility residents. The  
 699 agency shall indicate the classification on the written notice  
 700 of the violation as follows:

701 (a) Class "I" violations are defined in s. 408.813. The  
 702 agency shall impose an administrative fine of \$7,500 for each a



703 | cited class I violation in a facility that is licensed for fewer  
 704 | than 100 beds at the time of the violation ~~in an amount not less~~  
 705 | ~~than \$5,000 and not exceeding \$10,000 for each violation.~~ The  
 706 | agency shall impose an administrative fine of \$11,250 for each  
 707 | cited class I violation in a facility that is licensed for 100  
 708 | or more beds at the time of the violation. If the agency has  
 709 | knowledge of a class I violation which occurred within 12 months  
 710 | before an inspection, a fine must be levied for that violation,  
 711 | regardless of whether the noncompliance is corrected before the  
 712 | inspection.

713 | (b) Class "II" violations are defined in s. 408.813. The  
 714 | agency shall impose an administrative fine of \$3,000 for each a  
 715 | cited class II violation in a facility that is licensed for  
 716 | fewer than 100 beds at the time of the violation ~~in an amount~~  
 717 | ~~not less than \$1,000 and not exceeding \$5,000 for each~~  
 718 | ~~violation.~~ The agency shall impose an administrative fine of  
 719 | \$4,500 for each cited class II violation in a facility that is  
 720 | licensed for 100 or more beds at the time of the violation.

721 | (c) Class "III" violations are defined in s. 408.813. The  
 722 | agency shall impose an administrative fine of \$500 for each a  
 723 | cited class III violation in a facility that is licensed for 6  
 724 | or fewer beds at the time of the violation ~~in an amount not less~~  
 725 | ~~than \$500 and not exceeding \$1,000 for each violation.~~ The  
 726 | agency shall impose an administrative fine of \$750 for each  
 727 | cited class III violation in a facility that is licensed for 7  
 728 | to 24 beds at the time of the violation. The agency shall impose

729 an administrative fine of \$1,000 for each cited class III  
 730 violation in a facility that is licensed for 25 to 99 beds at  
 731 the time of the violation. The agency shall impose an  
 732 administrative fine of \$1,125 for each cited class III violation  
 733 in a facility that is licensed for 100 or more beds at the time  
 734 of the violation.

735 (d) Class "IV" violations are defined in s. 408.813. The  
 736 agency shall impose an administrative fine of \$100 for each a  
 737 cited class IV violation in a facility that is licensed for 6 or  
 738 fewer beds at the time of the violation in an amount not less  
 739 than \$100 and not exceeding \$200 for each violation. The agency  
 740 shall impose an administrative fine of \$150 for each cited class  
 741 IV violation in a facility that is licensed for 7 to 24 beds at  
 742 the time of the violation. The agency shall impose an  
 743 administrative fine of \$200 for each cited class IV violation in  
 744 a facility that is licensed for 25 to 99 beds at the time of the  
 745 violation. The agency shall impose an administrative fine of  
 746 \$225 for each cited class IV violation in a facility that is  
 747 licensed for 100 or more beds at the time of the violation.

748 (e) Any fine imposed for a class I violation or a class II  
 749 violation must be doubled if a facility was previously cited for  
 750 one or more class I or class II violations during the agency's  
 751 last licensure inspection or any inspection or complaint  
 752 investigation since the last licensure inspection.

753 (f) Notwithstanding s. 408.813(2)(c) and (d) and s.  
 754 408.832, a fine may be imposed for each class III or class IV

755 violation, regardless of correction, if a facility was  
 756 previously cited for one or more class III or class IV  
 757 violations during the agency's last licensure inspection for a  
 758 comparable violation.

759 (g) Regardless of the class of violation cited, instead of  
 760 the fine amounts listed in paragraphs (a)-(d), the agency shall  
 761 impose an administrative fine of \$500 if a facility is found not  
 762 to be in compliance with the background screening requirements  
 763 as provided in s. 408.809.

764 ~~(3) For purposes of this section, in determining if a~~  
 765 ~~penalty is to be imposed and in fixing the amount of the fine,~~  
 766 ~~the agency shall consider the following factors:~~

767 ~~(a) The gravity of the violation, including the~~  
 768 ~~probability that death or serious physical or emotional harm to~~  
 769 ~~a resident will result or has resulted, the severity of the~~  
 770 ~~action or potential harm, and the extent to which the provisions~~  
 771 ~~of the applicable laws or rules were violated.~~

772 ~~(b) Actions taken by the owner or administrator to correct~~  
 773 ~~violations.~~

774 ~~(c) Any previous violations.~~

775 ~~(d) The financial benefit to the facility of committing or~~  
 776 ~~continuing the violation.~~

777 ~~(e) The licensed capacity of the facility.~~

778 (3)-(4) Each day of continuing violation after the date  
 779 established by the agency ~~fixed~~ for correction termination of  
 780 the violation, as ordered by the agency, constitutes an

781 additional, separate, and distinct violation.

782 (4)~~(5)~~ An ~~Any~~ action taken to correct a violation shall be  
 783 documented in writing by the owner or administrator of the  
 784 facility and verified through followup visits by agency  
 785 personnel. The agency may impose a fine and, in the case of an  
 786 owner-operated facility, revoke or deny a facility's license  
 787 when a facility administrator fraudulently misrepresents action  
 788 taken to correct a violation.

789 (5)~~(6)~~ A ~~Any~~ facility whose owner fails to apply for a  
 790 change-of-ownership license in accordance with part II of  
 791 chapter 408 and operates the facility under the new ownership is  
 792 subject to a fine of \$5,000.

793 (6)~~(7)~~ In addition to any administrative fines imposed,  
 794 the agency may assess a survey fee, equal to the lesser of one  
 795 half of the facility's biennial license and bed fee or \$500, to  
 796 cover the cost of conducting initial complaint investigations  
 797 that result in the finding of a violation that was the subject  
 798 of the complaint or monitoring visits conducted under s.  
 799 429.28(3)(c) to verify the correction of the violations.

800 (7)~~(8)~~ During an inspection, the agency shall make a  
 801 reasonable attempt to discuss each violation with the owner or  
 802 administrator of the facility, prior to written notification.

803 (8)~~(9)~~ The agency shall develop and disseminate an annual  
 804 list of all facilities sanctioned or fined for violations of  
 805 state standards, the number and class of violations involved,  
 806 the penalties imposed, and the current status of cases. The list

807 shall be disseminated, at no charge, to the Department of  
 808 Elderly Affairs, the Department of Health, the Department of  
 809 Children and Families ~~Family Services~~, the Agency for Persons  
 810 with Disabilities, the area agencies on aging, the Florida  
 811 Statewide Advocacy Council, and the state and local ombudsman  
 812 councils. The Department of Children and Families ~~Family~~  
 813 ~~Services~~ shall disseminate the list to service providers under  
 814 contract to the department who are responsible for referring  
 815 persons to a facility for residency. The agency may charge a fee  
 816 commensurate with the cost of printing and postage to other  
 817 interested parties requesting a copy of this list. This  
 818 information may be provided electronically or through the  
 819 agency's website ~~Internet site~~.

820 Section 9. Subsection (3) and paragraph (c) of subsection  
 821 (4) of section 429.256, Florida Statutes, are amended to read:

822 429.256 Assistance with self-administration of  
 823 medication.—

824 (3) Assistance with self-administration of medication  
 825 includes:

826 (a) Taking the medication, in its previously dispensed,  
 827 properly labeled container, including an insulin syringe that is  
 828 prefilled with the proper dosage by a pharmacist and an insulin  
 829 pen that is prefilled by the manufacturer, from where it is  
 830 stored, and bringing it to the resident.

831 (b) In the presence of the resident, reading the label,  
 832 opening the container, removing a prescribed amount of

833 medication from the container, and closing the container.

834 (c) Placing an oral dosage in the resident's hand or

835 placing the dosage in another container and helping the resident

836 by lifting the container to his or her mouth.

837 (d) Applying topical medications.

838 (e) Returning the medication container to proper storage.

839 (f) Keeping a record of when a resident receives

840 assistance with self-administration under this section.

841 (g) Assisting with the use of a nebulizer, including

842 removing the cap of a nebulizer, opening the unit dose of

843 nebulizer solution, and pouring the prescribed premeasured dose

844 of medication into the dispensing cup of the nebulizer.

845 (h) Using a glucometer to perform blood-glucose level

846 checks.

847 (i) Assisting with putting on and taking off antiembolism

848 stockings.

849 (j) Assisting with applying and removing an oxygen cannula

850 but not with titrating the prescribed oxygen settings.

851 (k) Assisting with the use of a continuous positive airway

852 pressure device but not with titrating the prescribed setting of

853 the device.

854 (l) Assisting with measuring vital signs.

855 (m) Assisting with colostomy bags.

856 (4) Assistance with self-administration does not include:

857 ~~(e) Administration of medications through intermittent~~

858 ~~positive pressure breathing machines or a nebulizer.~~

CS/HB 573

2014

859 Section 10. Subsection (3) of section 429.27, Florida  
 860 Statutes, is amended to read:

861 429.27 Property and personal affairs of residents.—

862 (3) A facility, upon mutual consent with the resident,  
 863 shall provide for the safekeeping in the facility of personal  
 864 effects not in excess of \$500 and funds of the resident not in  
 865 excess of \$500 ~~\$200~~ cash, and shall keep complete and accurate  
 866 records of all such funds and personal effects received. If a  
 867 resident is absent from a facility for 24 hours or more, the  
 868 facility may provide for the safekeeping of the resident's  
 869 personal effects in excess of \$500.

870 Section 11. Subsections (2), (5), and (6) of section  
 871 429.28, Florida Statutes, are amended to read:

872 429.28 Resident bill of rights.—

873 (2) The administrator of a facility shall ensure that a  
 874 written notice of the rights, obligations, and prohibitions set  
 875 forth in this part is posted in a prominent place in each  
 876 facility and read or explained to residents who cannot read. The  
 877 ~~This~~ notice must ~~shall~~ include the name, address, and telephone  
 878 numbers of the local ombudsman council, the ~~and~~ central abuse  
 879 hotline, and, if ~~when~~ applicable, Disability Rights Florida ~~the~~  
 880 ~~Advocacy Center for Persons with Disabilities, Inc., and the~~  
 881 ~~Florida local advocacy council~~, where complaints may be lodged.  
 882 The notice must state that a complaint made to the Office of  
 883 State Long-Term Care Ombudsman or a local long-term care  
 884 ombudsman council, the names and identities of the residents

885 involved in the complaint, and the identity of complainants are  
 886 kept confidential pursuant to s. 400.0077 and that retaliatory  
 887 action cannot be taken against a resident for presenting  
 888 grievances or for exercising any other resident right. The  
 889 facility must ensure a resident's access to a telephone to call  
 890 the local ombudsman council, central abuse hotline, and  
 891 Disability Rights Florida Advocacy Center for Persons with  
 892 Disabilities, Inc., and the Florida local advocacy council.

893 (5) A ~~No~~ facility or employee of a facility may not serve  
 894 notice upon a resident to leave the premises or take any other  
 895 retaliatory action against any person who:

896 (a) Exercises any right set forth in this section.  
 897 (b) Appears as a witness in any hearing, inside or outside  
 898 the facility.

899 (c) Files a civil action alleging a violation of the  
 900 provisions of this part or notifies a state attorney or the  
 901 Attorney General of a possible violation of such provisions.

902 (6) A ~~Any~~ facility that ~~which~~ terminates the residency of  
 903 an individual who participated in activities specified in  
 904 subsection (5) must ~~shall~~ show good cause in a court of  
 905 competent jurisdiction. If good cause is not shown, the agency  
 906 shall impose a fine of \$2,500 in addition to any other penalty  
 907 assessed against the facility.

908 Section 12. Section 429.34, Florida Statutes, is amended  
 909 to read:

910 429.34 Right of entry and inspection.—



911           (1) In addition to the requirements of s. 408.811, any  
 912 duly designated officer or employee of the department, the  
 913 Department of Children and Families ~~Family Services~~, the  
 914 Medicaid Fraud Control Unit of the Office of the Attorney  
 915 General, the state or local fire marshal, or a member of the  
 916 state or local long-term care ombudsman council has ~~shall have~~  
 917 the right to enter unannounced upon and into the premises of any  
 918 facility licensed pursuant to this part in order to determine  
 919 the state of compliance with ~~the provisions of~~ this part, part  
 920 II of chapter 408, and applicable rules. Data collected by the  
 921 state or local long-term care ombudsman councils or the state or  
 922 local advocacy councils may be used by the agency in  
 923 investigations involving violations of regulatory standards. A  
 924 person specified in this section who knows or has reasonable  
 925 cause to suspect that a vulnerable adult has been or is being  
 926 abused, neglected, or exploited shall immediately report such  
 927 knowledge or suspicion to the central abuse hotline pursuant to  
 928 chapter 415.

929           (2) The agency shall inspect each licensed assisted living  
 930 facility at least once every 24 months to determine compliance  
 931 with this chapter and related rules. If an assisted living  
 932 facility is cited for one or more class I violations or two or  
 933 more class II violations arising from separate surveys within a  
 934 60-day period or due to unrelated circumstances during the same  
 935 survey, the agency must conduct an additional licensure  
 936 inspection within 6 months. In addition to any fines imposed on

937 the facility under s. 429.19, the licensee shall pay a fee for  
 938 the cost of the additional inspection equivalent to the standard  
 939 assisted living facility license and per-bed fees, without  
 940 exception for beds designated for recipients of optional state  
 941 supplementation. The agency shall adjust the fee in accordance  
 942 with s. 408.805.

943 Section 13. Subsection (2) of section 429.41, Florida  
 944 Statutes, is amended to read:

945 429.41 Rules establishing standards.—

946 (2) In adopting any rules pursuant to this part, the  
 947 department, in conjunction with the agency, shall make distinct  
 948 standards for facilities based upon facility size; the types of  
 949 care provided; the physical and mental capabilities and needs of  
 950 residents; the type, frequency, and amount of services and care  
 951 offered; and the staffing characteristics of the facility. Rules  
 952 developed pursuant to this section may ~~shall~~ not restrict the  
 953 use of shared staffing and shared programming in facilities that  
 954 are part of retirement communities that provide multiple levels  
 955 of care and otherwise meet the requirements of law and rule. If  
 956 a continuing care facility licensed under chapter 651 or a  
 957 retirement community offering multiple levels of care licenses a  
 958 building or part of a building designated for independent living  
 959 for assisted living, staffing requirements established in rule  
 960 apply only to residents who receive personal, limited nursing,  
 961 or extended congregate care services under this part. Such  
 962 facilities shall retain a log listing the names and unit number

963 for residents receiving these services. The log must be  
 964 available to surveyors upon request. Except for uniform  
 965 firesafety standards, the department shall adopt by rule  
 966 separate and distinct standards for facilities with 16 or fewer  
 967 beds and for facilities with 17 or more beds. The standards for  
 968 facilities with 16 or fewer beds must ~~shall~~ be appropriate for a  
 969 noninstitutional residential environment; however, provided  
 970 ~~that~~ the structure may not be ~~is no~~ more than two stories in  
 971 height and all persons who cannot exit the facility unassisted  
 972 in an emergency must reside on the first floor. The department,  
 973 in conjunction with the agency, may make other distinctions  
 974 among types of facilities as necessary to enforce the provisions  
 975 of this part. Where appropriate, the agency shall offer  
 976 alternate solutions for complying with established standards,  
 977 based on distinctions made by the department and the agency  
 978 relative to the physical characteristics of facilities and the  
 979 types of care offered ~~therein~~.

980 Section 14. Subsections (1) through (11) of section  
 981 429.52, Florida Statutes, are renumbered as subsections (2)  
 982 through (12), respectively, a new subsection (1) is added to  
 983 that section, and present subsections (5) and (9) of that  
 984 section are amended, to read:

985 429.52 Staff training and educational programs; core  
 986 educational requirement.—

987 (1) Effective October 1, 2014, each new assisted living  
 988 facility employee who has not previously completed core training

989 must attend a preservice orientation provided by the facility  
 990 before interacting with residents. The preservice orientation  
 991 must be at least 2 hours in duration and cover topics that help  
 992 the employee provide responsible care and respond to the needs  
 993 of facility residents. Upon completion, the employee and the  
 994 administrator of the facility must sign a statement that the  
 995 employee completed the required pre-service orientation. The  
 996 facility must keep the signed statement in the employee's  
 997 personnel record.

998 (6)~~(5)~~ Staff involved with the management of medications  
 999 and assisting with the self-administration of medications under  
 1000 s. 429.256 must complete a minimum of 6 ~~4~~ additional hours of  
 1001 training provided by a registered nurse, licensed pharmacist, or  
 1002 department staff. The department shall establish by rule the  
 1003 minimum requirements of this additional training.

1004 (10)~~(9)~~ The training required by this section other than  
 1005 the preservice orientation must ~~shall~~ be conducted by persons  
 1006 registered with the department as having the requisite  
 1007 experience and credentials to conduct the training. A person  
 1008 seeking to register as a trainer must provide the department  
 1009 with proof of completion of the minimum core training education  
 1010 requirements, successful passage of the competency test  
 1011 established under this section, and proof of compliance with the  
 1012 continuing education requirement in subsection (5) ~~(4)~~.

1013 Section 15. The Legislature finds that consistent  
 1014 regulation of assisted living facilities benefits residents and

1015 operators of such facilities. To determine whether surveys are  
 1016 consistent between surveys and surveyors, the Office of Program  
 1017 Policy Analysis and Government Accountability shall conduct a  
 1018 study of intersurveyor reliability for assisted living  
 1019 facilities. By November 1, 2014, the Office of Program Policy  
 1020 Analysis and Government Accountability shall submit a report of  
 1021 its findings to the Governor, the President of the Senate, and  
 1022 the Speaker of the House of Representatives and make any  
 1023 recommendations for improving intersurveyor reliability.

1024 Section 16. The Legislature finds that consumers need  
 1025 additional information on the quality of care and service in  
 1026 assisted living facilities in order to select the best facility  
 1027 for themselves or their loved ones. Therefore, the Agency for  
 1028 Health Care Administration shall:

1029 (1) Implement a rating system for assisted living  
 1030 facilities by March 1, 2015. The agency shall adopt rules to  
 1031 administer this subsection.

1032 (2) By November 1, 2014, create content that is easily  
 1033 accessible through the front page of the agency's Internet  
 1034 website either directly or indirectly through a link to another  
 1035 established website or websites of the agency's choosing. The  
 1036 website must be searchable by facility name, city, or zip code.

1037 At a minimum, the content must include:

1038 (a) Information on each licensed assisted living facility,  
 1039 including, but not limited to:

1040 1. The name and address of the facility.

- 1041        2. The number and type of licensed beds in the facility.
- 1042        3. The types of licenses held by the facility.
- 1043        4. The facility's license expiration date and status.
- 1044        5. Proprietary or nonproprietary status of the licensee.
- 1045        6. Any affiliation with a company or other organization  
 1046 owning or managing more than one assisted living facility in  
 1047 this state.
- 1048        7. The total number of clients that the facility is  
 1049 licensed to serve and the most recently available occupancy  
 1050 levels.
- 1051        8. The number of private and semiprivate rooms offered.
- 1052        9. The bed-hold policy.
- 1053        10. The religious affiliation, if any, of the assisted  
 1054 living facility.
- 1055        11. The languages spoken by the staff.
- 1056        12. Availability of nurses.
- 1057        13. Forms of payment accepted, including, but not limited  
 1058 to, Medicaid, Medicaid long-term managed care, private  
 1059 insurance, health maintenance organization, Veterans  
 1060 Administration, CHAMPUS program, or workers' compensation  
 1061 coverage.
- 1062        14. Indication if the licensee is operating under  
 1063 bankruptcy protection.
- 1064        15. Recreational and other programs available.
- 1065        16. Special care units or programs offered.
- 1066        17. Whether the facility provides mental health services,

1067 as defined in s. 394.67, Florida Statutes, to residents with  
 1068 mental illness and the number of mental health residents.

1069 18. Whether the facility is a part of a retirement  
 1070 community that offers other services pursuant to part II or part  
 1071 III of chapter 400, part I or part III of chapter 429, or  
 1072 chapter 651, Florida Statutes.

1073 19. Links to the State Long-Term Care Ombudsman Program  
 1074 website and the program's statewide toll-free telephone number.

1075 20. Links to the Internet websites of the providers or  
 1076 their affiliates.

1077 21. Other relevant information that the agency currently  
 1078 collects.

1079 (b) Survey and violation information for the facility,  
 1080 including a list of the facility's violations committed during  
 1081 the previous 60 months, which upon the effective date of this  
 1082 act may include violations committed on or after July 1, 2009.  
 1083 The list shall be updated monthly and include for each  
 1084 violation:

1085 1. A summary of the violation, including all licensure,  
 1086 revisit, and complaint survey information, presented in a manner  
 1087 understandable by the general public.

1088 2. Any sanctions imposed by final order.

1089 3. The date the corrective action was confirmed by the  
 1090 agency.

1091 (c) Links to inspection reports that the agency has on  
 1092 file.

CS/HB 573

2014

1093 | Section 17. This act shall take effect July 1, 2014. |



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

---

1 Committee/Subcommittee hearing bill: Health Care Appropriations  
2 Subcommittee

3 Representative Ahern offered the following:

**Amendment (with title amendment)**

6 -----

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

8 Remove lines 138-139 and insert:  
9 conforming a cross-reference; requiring the Office of  
10 Program Policy Analysis

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Health Care Appropriations

2 Subcommittee

3 Representative Richardson offered the following:

4  
5 **Amendment**

6 Remove lines 168-169 and insert:

7 A Medicaid managed care plan or a managing entity shall The  
8 ~~department must~~ ensure that:

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
 ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
 ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
 FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
 WITHDRAWN \_\_\_\_\_ (Y/N)  
 OTHER \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Health Care Appropriations  
 2 Subcommittee

3 Representative Richardson offered the following:

4  
 5 **Amendment (with title amendment)**

6 Remove lines 701-803 and insert:

7 (a) Class "I" violations are defined in s. 408.813. The  
 8 agency shall impose an administrative fine for a cited class I  
 9 violation in an amount of ~~not less than~~ \$5,000 ~~and not exceeding~~  
 10 ~~\$10,000~~ for each violation.

11 (b) Class "II" violations are defined in s. 408.813. The  
 12 agency shall impose an administrative fine for a cited class II  
 13 violation in an amount of ~~not less than~~ \$1,000 ~~and not exceeding~~  
 14 ~~\$5,000~~ for each violation.

15 (c) Class "III" violations are defined in s. 408.813. The  
 16 agency shall impose an administrative fine for a cited class III  
 17 violation in an amount of ~~not less than~~ \$500 ~~and not exceeding~~

Amendment No. 3

18 ~~\$1,000~~ for each violation.

19 (d) Class "IV" violations are defined in s. 408.813. The  
20 agency shall impose an administrative fine for a cited class IV  
21 violation in an amount of not less than \$100 and not exceeding  
22 ~~\$200~~ for each violation.

23 (e) Regardless of the class of violation cited, instead of  
24 the fine amounts listed in paragraphs (a)-(d), the agency shall  
25 impose an administrative fine of \$500 if a facility is found not  
26 to be in compliance with the background screening requirements  
27 as provided in s. 408.809.

28 (3) For purposes of this section, in determining if a  
29 penalty is to be imposed and in fixing the amount of the fine,  
30 the agency shall consider the following factors:

31 (a) The gravity of the violation, including the  
32 probability that death or serious physical or emotional harm to  
33 a resident will result or has resulted, the severity of the  
34 action or potential harm, and the extent to which the provisions  
35 of the applicable laws or rules were violated.

36 (b) Actions taken by the owner or administrator to correct  
37 violations.

38 (c) Any previous violations.

39 (d) The financial benefit to the facility of committing or  
40 continuing the violation.

41 (e) The licensed capacity of the facility.

42 (4) Each day of continuing violation after the date  
43 established by the agency fixed for correction ~~termination~~ of

Amendment No. 3

44 the violation, ~~as ordered by the agency,~~ constitutes an  
45 additional, separate, and distinct violation.

46 (5) An ~~Any~~ action taken to correct a violation shall be  
47 documented in writing by the owner or administrator of the  
48 facility and verified through followup visits by agency  
49 personnel. The agency may impose a fine and, in the case of an  
50 owner-operated facility, revoke or deny a facility's license  
51 when a facility administrator fraudulently misrepresents action  
52 taken to correct a violation.

53 (6) A ~~Any~~ facility whose owner fails to apply for a  
54 change-of-ownership license in accordance with part II of  
55 chapter 408 and operates the facility under the new ownership is  
56 subject to a fine of \$5,000.

57 (7) In addition to any administrative fines imposed, the  
58 agency may assess a survey fee, equal to the lesser of one half  
59 of the facility's biennial license and bed fee or \$500, to cover  
60 the cost of conducting initial complaint investigations that  
61 result in the finding of a violation that was the subject of the  
62 complaint or monitoring visits conducted under s. 429.28(3)(c)  
63 to verify the correction of the violations.

64 (8) During an inspection, the agency shall make a  
65 reasonable attempt to discuss each violation with the owner or  
66 administrator of the facility, prior to written notification.

67 (9) The agency shall develop and disseminate an annual  
68  
69 -----

Amendment No. 3

70 **T I T L E A M E N D M E N T**

71 Remove line 96 and insert:

72 s. 429.19, F.S.; revising the amounts of

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health Care Appropriations  
 2 Subcommittee

3 Representative Ahern offered the following:

4  
 5  
 6  
 7  
 8  
 9  
 10  
 11

**Amendment**

Remove lines 753-758 and insert:

(f) Notwithstanding s. 408.813 (2)(c) and 408.832, if a facility is cited for ten or more class III violations during an inspection or survey, the agency shall impose a fine for each violation.

Amendment No. 5

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Health Care Appropriations  
2 Subcommittee

3 Representative Richardson offered the following:

**Amendment (with title amendment)**

6 Remove lines 1028-1092 and insert:

7 Health Care Administration shall by November 1, 2014, create  
8 content that is easily accessible through the front page of the  
9 agency's Internet website either directly or indirectly through  
10 links to one or more other established websites of the agency's  
11 choosing. The website must be searchable by facility name, city,  
12 or zip code. At a minimum, the content must include:

13 (1) Information on each licensed assisted living facility,  
14 including, but not limited to:

15 (a) The name and address of the facility.

16 (b) The number and type of licensed beds in the facility.

17 (c) The types of licenses held by the facility.



Amendment No. 5

- 18        (d) The facility's license expiration date and status.  
19        (e) Proprietary or nonproprietary status of the licensee.  
20        (f) Any affiliation with a company or other organization  
21 owning or managing more than one assisted living facility in  
22 this state.  
23        (g) The total number of clients that the facility is  
24 licensed to serve and the most recently available occupancy  
25 levels.  
26        (h) The number of private and semiprivate rooms offered.  
27        (i) The bed-hold policy.  
28        (j) The religious affiliation, if any, of the assisted  
29 living facility.  
30        (k) The languages spoken by the staff.  
31        (l) Availability of nurses.  
32        (m) Forms of payment accepted, including, but not limited  
33 to, Medicaid, Medicaid long-term managed care, private  
34 insurance, health maintenance organization, United States  
35 Department of Veterans Affairs, CHAMPUS program, or workers'  
36 compensation coverage.  
37        (n) Indication if the licensee is operating under  
38 bankruptcy protection.  
39        (o) Recreational and other programs available.  
40        (p) Special care units or programs offered.  
41        (q) Whether the facility provides mental health services,  
42 as defined in s. 394.67, Florida Statutes, to residents with  
43 mental illness and the number of mental health residents.

Amendment No. 5

44 (r) Whether the facility is a part of a retirement  
45 community that offers other services pursuant to part II or part  
46 III of chapter 400, part I or part III of chapter 429, or  
47 chapter 651, Florida Statutes.

48 (s) Links to the State Long-Term Care Ombudsman Program  
49 website and the program's statewide toll-free telephone number.

50 (t) Links to the Internet websites of the providers or  
51 their affiliates.

52 (u) Other relevant information that the agency currently  
53 collects.

54 (2) Survey and violation information for the facility,  
55 including a list of the facility's violations committed during  
56 the previous 60 months, which upon the effective date of this  
57 act may include violations committed on or after July 1, 2009.  
58 The list shall be updated monthly and include for each  
59 violation:

60 (a) A summary of the violation, including all licensure,  
61 revisit, and complaint survey information, presented in a manner  
62 understandable by the general public.

63 (b) Any sanctions imposed by final order.

64 (c) The date the corrective action was confirmed by the  
65 agency.

66 (3) Links to inspection reports that the agency has on  
67 file.

68 -----  
69 -----

Amendment No. 5

70 | **T I T L E A M E N D M E N T**

71 | Remove lines 143-145 and insert:

72 | requiring the agency to create content for the agency's website

Amendment No. 6

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health Care Appropriations  
 2 Subcommittee  
 3 Representative Ahern offered the following:

**Amendment (with title amendment)**

Remove lines 1029-1031

-----

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

Remove lines 143-145 and insert:

requiring the agency to create content for the agency's website

Amendment No. 7

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Health Care Appropriations Subcommittee

Representative Ahern offered the following:

**Amendment (with title amendment)**

Between lines 1092 and 1093, insert:

Section 17. For Fiscal Year 2014-2015, two full-time equivalent positions with associated salary rate are authorized and the sums of \$7,986 in nonrecurring funds and \$151,322 in recurring funds from the Health Care Trust Fund of the Agency for Health Care Administration are hereby appropriated for the purpose of carrying out the regulatory activities provided in this act.

-----

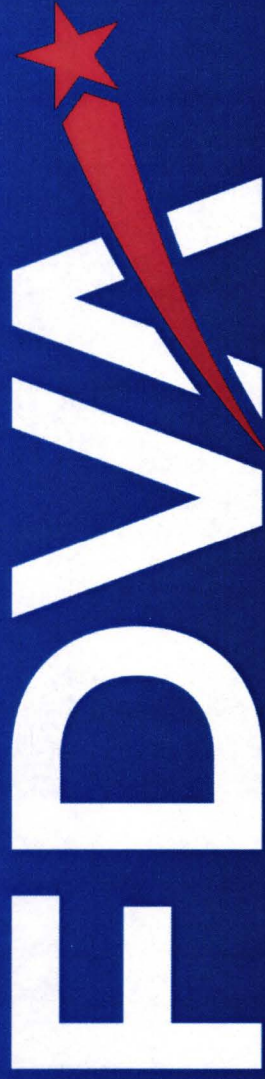
Amendment No. 7

18  
19  
20  
21  
22

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

Remove line 148 and insert:  
criteria for the content; providing an appropriation; providing  
an effective date.





FLORIDA DEPARTMENT OF VETERANS' AFFAIRS

---

*Honoring those who served U.S.*

**Presentation to the Health Care Appropriations Subcommittee**

**March 4, 2014**



# Today's Presentation

- **Update: State Veterans' Nursing Home Study & Building Process**
- **Update: Agency's Outreach & Branding Campaign**



# SVNH Selection and Building Process

## General Information:

- Process must be conducted under the provisions of Florida's Sunshine Laws.
- USDVA Homes Construction Grant Committee changed their grant approval process.
- USDVA's Homes Construction Grant approval process mandates the naming of a State Veterans' Nursing Home (SVNH) County location – with ability to change later after completion of Needs Assessment Study.
  - Name will serve as a placeholder only! (per coordination with USDVA)
- USDVA is aware that Florida government operates under the "Sunshine" (open government) law provisions & that submitting a specific county or city name tacitly implies that location is the State of Florida's choice for a new SVNH.
- USDVA acknowledges that FDVA can't bind the State of Florida to a SVNH site choice without executive level approval & budget authority.



# SVNH Selection and Building Process

## Process includes but not limited to:

- 1 - Governor & Legislature approve assessment study **(Completed)**
- 2 - Needs Assessment Study **(Completed)**
- 3 - Request for site proposals from counties **(In Progress)**
- 4 - Evaluation of site proposals; recommendation to Governor & Cabinet
- 5 - Approval of proposal & official site selection announcement(s)
- 6 - Naming of Veterans' Home (Florida Medal of Honor Recipient)
- 7 - USDVA Architectural Plan submission
- 8 - Construction
- 9 - Grand Opening

**Above steps used in building previous four Florida SVNH's.**



# SVNH Needs Assessment Study

## Recommended Locations for New Nursing Home Facilities

### Rank Ordered by Multi-County Service Area

County Rank in Florida	County	Sum of Points of Eligible Counties	Recommended Service Areas
1	Collier	145	<u>Area One</u> Collier, Lee
2	Lee	144	
3	Polk	138	<u>Area Two</u> Polk, Manatee & Hillsborough
4	Manatee	132	
8	Hillsborough	124	
5	Marion	132	<u>Area Three</u> Marion, Putnam & Sumter
6	Putnam	125	
10	Sumter	119	
7	St. Lucie	125	St. Lucie
9	Palm Beach	119	Palm Beach

#### Key Criteria (weighted)

- VA Healthcare Facility in County
- Distance to State VA Nursing Home
- Eligible Counties with Elderly Vets
- County NH Beds/1,000 Elderly Males
- Eligible Counties in Poverty
- Eligible Counties with Nurse Education Programs

*Study excludes counties where State Veterans' Homes already exists.*



# Next Steps in the Process

## Way Ahead:

- **Receive Site Proposals by Counties**
- **Naming of State Veterans' Nursing Home**
- **Approval of FDVA Site Committee's Site Recommendation by Governor & Cabinet**
- **Architectural plan development**
- **Home construction**

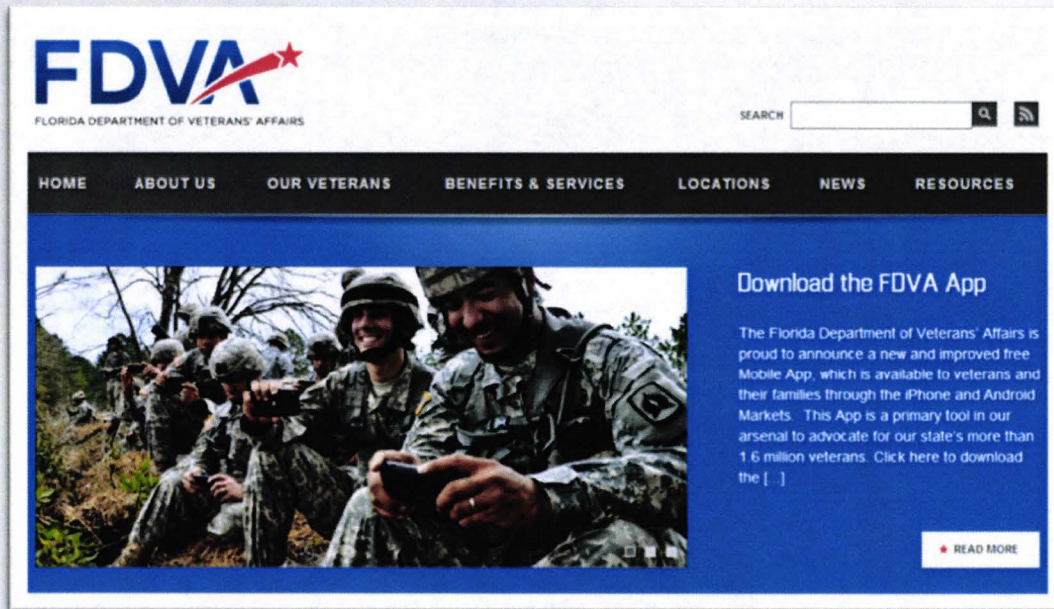


# Outreach & Branding Campaign

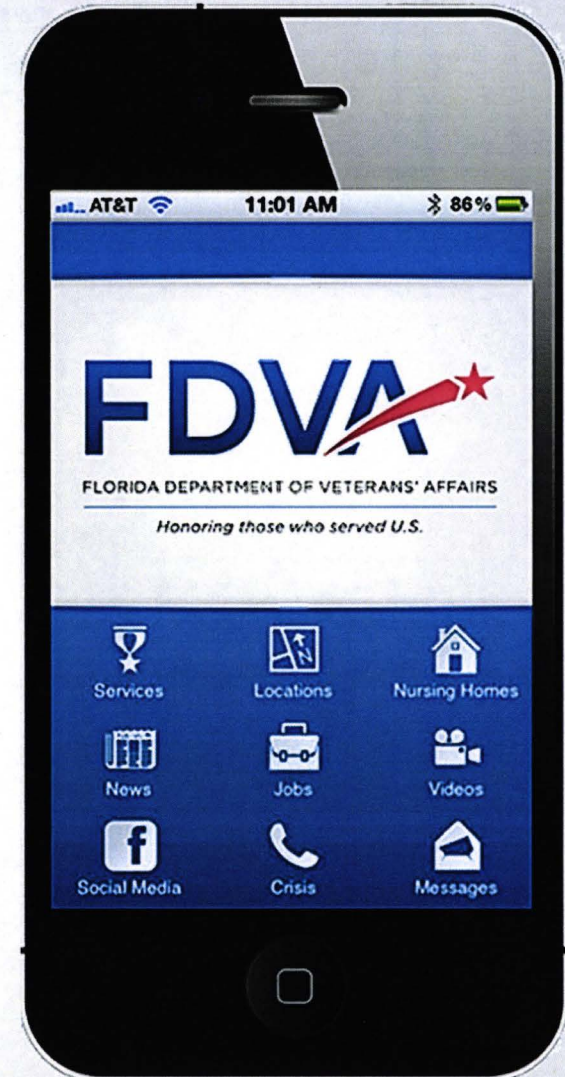




# Connecting with FDVA

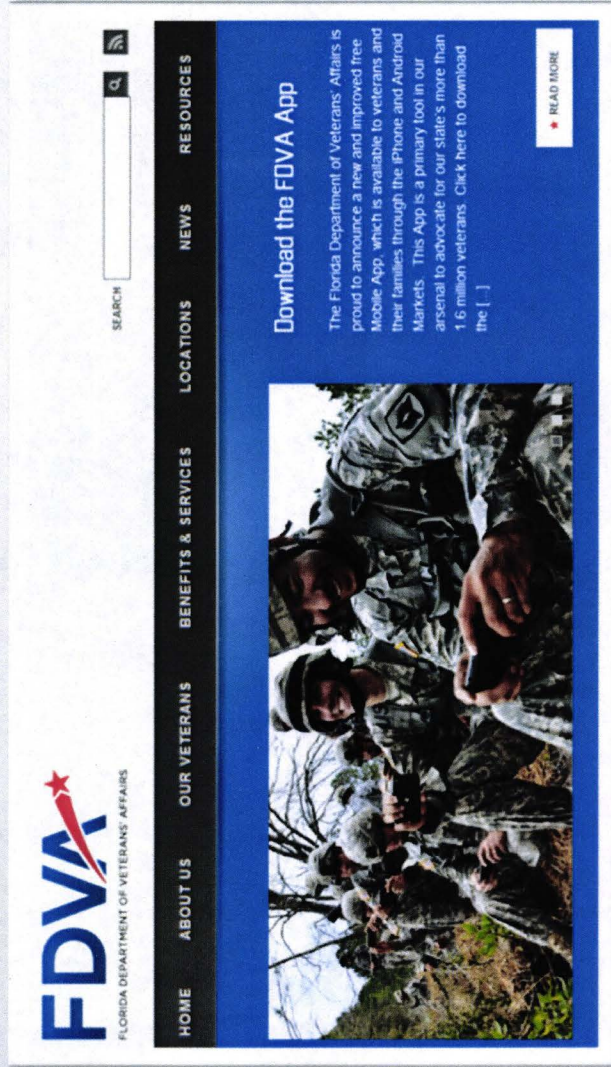


[www.FloridaVets.org](http://www.FloridaVets.org)





# Public Service Announcements



- **General Release**

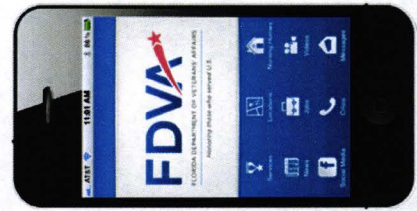
- English

- Spanish

- **Women Veterans**

- **Vietnam Veterans**

- **Returning Veterans**





# Portable Banners & Trade Show Displays

**FDVA**

FLORIDA DEPARTMENT OF VETERANS' AFFAIRS

*Honoring those who served U.S.*

CONNECTING VETERANS  
AND THEIR FAMILIES TO  
FEDERAL AND STATE  
BENEFITS AND SERVICES  
THEY HAVE EARNED



[www.FloridaVets.org](http://www.FloridaVets.org)  
(727) 319-7440





# Questions



FLORIDA DEPARTMENT OF VETERANS' AFFAIRS

