



Health & Human Services Committee

**Thursday, March 20, 2014
9:00 AM - 11:00 AM
Morris Hall**

**Will Weatherford
Speaker**

**Richard Corcoran
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health & Human Services Committee

Start Date and Time: Thursday, March 20, 2014 09:00 am
End Date and Time: Thursday, March 20, 2014 11:00 am
Location: Morris Hall (17 HOB)
Duration: 2.00 hrs

Consideration of the following proposed committee bill(s):

PCB HHSC 14-01 -- State Employee Group Health Plan

Consideration of the following bill(s):

HB 91 State Ombudsman Program by Roberson, K.
CS/HB 203 Unaccompanied Homeless Youth by Civil Justice Subcommittee, Raulerson
HB 323 Pharmacy Technicians by La Rosa, Campbell
CS/HB 419 Pub. Rec./Department of Health by Health Quality Subcommittee, Renuart
CS/HB 455 Restitution for Juvenile Offenses by Criminal Justice Subcommittee, Eagle
CS/HB 463 Background Screening by Judiciary Committee, Reed
CS/HB 511 Cancer Control and Research by Health Quality Subcommittee, Coley
CS/HB 589 Children and Youth Cabinet by Choice & Innovation Subcommittee, Harrell
HB 591 Newborn Health Screening by Harrell

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Wednesday, March 19, 2014.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, March 19, 2014.

NOTICE FINALIZED on 03/18/2014 16:06 by Iseminger.Bobbye

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 511 Cancer Control and Research
SPONSOR(S): Health Quality Subcommittee; Coley
TIED BILLS: IDEN./SIM. **BILLS:** SB 734

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	11 Y, 0 N, As CS	Castagna	O'Callaghan
2) Health & Human Services Committee		Castagna <i>AC</i>	Calamas <i>CC</i>

SUMMARY ANALYSIS

The Cancer Control and Research Advisory Council (CCRAB) was established by the Legislature in 1979 to advise the Legislature, Governor, and Surgeon General on how to reduce the cancer burden in Florida. The CCRAB monitors cancer trends and disparities, and evaluates and promotes effective interventions to help in cancer prevention, screening, and treatment.

The bill reduces the membership total of the CCRAB from 35 members to 15 members and revises the composition of the CCRAB. The bill also modifies the appointment process by requiring the Governor, Speaker of the House of Representatives, and President of the Senate to appoint a specified number of members and requiring the chief executive officers of 9 named organizations to each appoint a member to the CCRAB.

The bill requires the CCRAB to select a chairperson, whereas currently the chairperson is appointed by the Governor. The bill also allows renewal of members' terms, and reduces minority representation and the number of members required to establish a quorum to correlate with the reduction of members in the CCRAB.

This bill requires a CCRAB member's representative organization to pay for travel reimbursement and, if a member is not affiliated with an institution or organization, the travel expenses will be paid for by the H. Lee Moffitt Cancer Center and Research Institute, Inc.

The bill removes the requirement that the CCRAB develop or purchase, make available to physicians and surgeons, and update written summaries regarding breast cancer and prostate cancer treatment alternatives when funds are appropriated for such purpose. This bill also removes the requirement that the CCRAB develop and implement educational programs about the early detection and treatment of breast cancer and prostate cancer.

The bill requires the CCRAB to formulate and recommend to the State Surgeon General a statewide research plan in addition to the current responsibility to recommend a plan for cancer care and treatment.

The bill deletes the Florida Cancer Control and Research Fund, and, to conform to this change removes the requirement that the:

- CCRAB recommend the awarding of grants and contracts to qualified nonprofit associations or governmental agencies in order to plan, establish, or conduct programs in cancer control or prevention, cancer education and training, and cancer research.
- Board of Governors or the State Surgeon General award grants or contracts after consultation with CCRAB.
- Members of the CCRAB refrain from participating in discussions or decisions to recommend grants or contracts to a qualified nonprofit association or any state agency, or its political subdivision, if CCRAB members have an association or contractual relationship with that entity.

This bill has an insignificant, positive fiscal impact on the Department of Health.

This bill has an effective date of July 1, 2014.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0511c.HHSC.DOCX

DATE: 3/19/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Cancer Control and Research Advisory Council (CCRAB)

In 1979, the Florida Cancer Control and Research Act was created pursuant to, s. 1004.435, F.S., along with the Cancer Control Research Advisory Council (CCRAB)¹ which serves to advise the Legislature, Governor, and State Surgeon General of efforts to reduce the cancer burden in Florida. The CCRAB is housed within the H. Lee Moffitt Cancer Center and Research Institute, Inc. (Moffitt).

CCRAB Membership

The CCRAB consists of 35 members, all of whom must be residents of Florida. The membership appointment process is currently structured as follows:

- The Speaker of the House of Representatives appoints one member from the House of Representatives.
- The President of the Senate appoints one member from the Senate.
- The Governor appoints one member from the following organizations:
 - American Cancer Society,
 - Florida Tumor Registrars Association,
 - Sylvester Comprehensive Cancer Center of the University of Miami,
 - Department of Health,
 - University of Florida Shands Cancer Center,
 - Agency for Health Care Administration,
 - Florida Nurses Association,
 - Florida Osteopathic Medical Association,
 - American College of Surgeons,
 - School of Medicine of the University of Miami,
 - College of Medicine of the University of Florida,
 - NOVA Southeastern College of Osteopathic Medicine,
 - American College of Medicine of the University of South Florida,
 - College of Public Health of the University of South Florida,
 - Florida Society of Clinical Oncology,
 - Florida Obstetric and Gynecologic Society,
 - Florida Ovarian Cancer Alliance Speaks,
 - Florida Medical Association,
 - Florida Pediatric Society,
 - Florida Radiological Society,
 - Florida Society of Pathologists,
 - H. Lee Moffitt Cancer Center and Research Institute, Inc.,
 - Florida Dental Association,
 - Florida Hospital Association,
 - Association of Community Cancer Centers,
 - Statutory teaching hospitals,

¹ Although the Cancer Control and Research Board (CCRAB) was renamed as the Cancer Control and Research Advisory Council, the acronym associated with the board is still used.

- Florida Association of Pediatric Tumor Programs, Inc.,
- Cancer Information Services,
- Florida Agricultural and Mechanical University Institute of Public Health,
- Florida Society of Oncology Social Workers, and
- Three consumer advocates from the general public.

At least one of the members appointed by the Governor must be 60 years of age or older. At least 10 of the members must be individuals who are minority persons as defined by s. 288.703, F.S.² Member terms are 4 years from dates of appointment. A chairperson appointed by the Governor serves for a 2-year term. The CCRAB meets at least semiannually and 16 members constitute a quorum. All members serve as volunteers; however, travel and hotel expenses for meeting attendance are currently paid for by Moffitt, which is then reimbursed by the Department, pursuant to ss. 1004.435 and 112.061, F.S.³

Many member organizations have had poor attendance at CCRAB meetings in recent years. Members from the following organizations have attended 3 or fewer meetings out of the 9 total meetings that were held from 2008-2013:⁴

- Florida Society of Pathologists
- Florida Hospital Association
- American College of Surgeons
- Florida Radiological Society
- Florida Pediatric Society
- Florida Agricultural and Mechanical University Institute of Public Health
- NOVA Southeastern College of Osteopathic Medicine
- Florida Dental Association
- UF College of Medicine

CCRAB Functions

Annually the CCRAB approves the Florida Cancer Plan, which provides strategies for cancer control and research that must be consistent with the State Health Plan and integrated and coordinated with existing programs in this state. The CCRAB annually reviews the priority strategies. Recently, the Florida Cancer Plan Council proposed strategies to increase stakeholder participation in cancer prevention efforts, access to screening and treatment, and survivorship rates.⁵

Additionally, the CCRAB is required to:

² Section 288.703, F.S., defines a minority person as a lawful permanent resident of Florida who is: an African American, a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin; a Hispanic American, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race; an Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands before 1778; a Native American, a person who has origins in any of the Indian Tribes of North America before 1835, upon presentation of proper documentation thereof as established by rule of the Department of Management Services; an American woman

³ Pursuant to a contract between Moffitt and the Department, the Department reimburses Moffitt for members' travel expenses using Centers for Disease Control and Prevention grant money. A copy of the contract is on file with Health and Human Services Committee staff.

⁴ CCRAB Meeting Attendance, 2008-2013(on file with Health and Human Services Committee staff).

⁵ 2012-2013 Florida Cancer Plan Priority Strategies, Cancer Control and Research Advisory Council report available at: <http://www.ccrab.org/Publications.aspx> (last accessed February 15, 2014).

- Recommend to the State Surgeon General a plan for the care and treatment of persons suffering from cancer and standard requirements for cancer units in hospitals and clinics in Florida;
- Recommend grant and contract awards for the planning, establishment, or implementation of programs in cancer control or prevention, cancer education and training, and cancer research;
- Pursuant to legislative appropriations, provide written summaries that are easily understood by the average adult patient, and inform actual and high-risk breast cancer patients, prostate cancer patients, and men who are considering prostate cancer screening of the medically viable treatment alternatives available to them and the relative advantages, disadvantages, and risks associated with such treatment;
- Implement an educational program for the prevention of cancer and its early detection and treatment; and
- Advise the Board of Governors or the State Surgeon General on methods of enforcing and implementing laws concerning cancer control, research, and education; and recommend to the Board of Governors or the State Surgeon General rulemaking needed to enable the CCRAB to perform its duties.

In addition, seven CCRAB members participate on a joint committee formed with 6 members of the Biomedical Research Advisory Council to create the criteria and process for cancer centers to be designated as Cancer Centers of Excellence under the Cancer Center of Excellence Award Program.⁶

Florida Cancer Control and Research Fund

Section 1004.435(6), F.S., establishes the Florida Cancer Control and Research Fund⁷ consisting of funds appropriated from the General Revenue Fund and any gifts, grants or funds received from other sources. The fund is used exclusively for grants to contract with qualified nonprofit associations or governmental agencies for cancer control and prevention, education and training, cancer research, and other related expenses to fund the programs authorized by the State Board of Education or the State Surgeon General.⁸

Funds have never been allocated for the Florida Cancer Control and Research Fund although there have been attempts to obtain funding by the CCRAB.⁹

Written Summaries on Breast Cancer and Prostate Cancer Treatment

The law currently instructs the CCRAB to develop or purchase written summaries, written in layman's terms to inform actual and high risk breast cancer patients, prostate cancer patients, and men who are considering prostate cancer screening of medically viable treatment alternatives available to them.¹⁰ Under s. 458.324 (1)(2), F.S. and s. 459.0125 (1)(2), F.S., "medically viable" is defined to mean modes of acceptable treatment as outlined in these written summaries developed or purchased by the CCRAB.

Physicians are instructed to discuss the written summary with their patient or the legal representative of such patient by communicating the information directly to them and providing a copy of the summary to the patient or the patient's legal representative.¹¹

Funds have been appropriated for the development of the written summaries twice; once in 1996 for summaries printed in English, and once in 1999 for summaries printed in English and Spanish.¹²

⁶ Chapter 2013-50, L.O.F.

⁷ The Florida Cancer Control and Research Fund was established in law in 2002. Section 189, ch. 2002-387, L.O.F.

⁸ Section 1004.435(6), F.S.

⁹ Email correspondence with the Department, February 17, 2014 (on file with Health and Human Services Committee staff).

¹⁰ Section 1004.435(4)(m), F.S.

¹¹ Section 458.324 (1)(2) F.S.

Effect of Proposed Changes

This bill revises the membership total of the CCRAB from 35 members to 15 members and modifies the membership appointment process as follows:

- The Governor appoints one member who specializes in pediatric oncology research or clinical care.
- The President of the Senate appoints 2 members; one Senator and one individual who specializes in oncology clinical care or research.
- The Speaker of the House of Representatives appoints 2 members; one Representative and one individual who is a current or former cancer patient or a current or former caregiver to a cancer patient.
- The State Surgeon General will serve as a member or appoint a designee to represent the Department.
- The chief executive officer of each of the 9 organizations below must appoint one member:
 - American Cancer Society
 - Sylvester Comprehensive Cancer Center of the University of Miami
 - University of Florida, Shands Cancer Center
 - Florida Nurses Association (specializing in field of oncology)
 - Florida Osteopathic Medical Association (specializing in field of oncology)
 - Florida Medical Association (specializing in field of oncology)
 - Moffitt Cancer Center
 - Florida Hospital Association (specializing in field of oncology)
 - Association of Community Cancer Centers

The bill authorizes the renewal of members' 4-year terms and authorizes the chairperson to be selected by the CCRAB, instead of being appointed by the Governor. To correspond to the reduction in membership, the bill provides that 8 members constitute a quorum instead of 16 and minority representation is satisfied with 4 members instead of 10.

The bill removes CCRAB members who represent the following organizations:¹³

- Florida Tumor Registrars Association
- Agency for Health Care Administration
- American College of Surgeons
- School of Medicine of the University of Miami
- College of Medicine of the University of Florida
- NOVA Southeastern College of Osteopathic Medicine
- College of Medicine of the University of South Florida
- College of Public Health of the University of South Florida
- Florida Society of Clinical Oncology
- Florida Obstetric and Gynecological Society
- Florida Ovarian Cancer Alliance Speaks organization
- Florida Pediatric Society
- Florida Radiological Society
- Florida Society of Pathologists
- Florida Dental Association

¹² Email correspondence with the Department, February 17, 2014 (on file with Health and Human Services Committee staff).

¹³ H. Lee Moffitt Cancer Center provided attendance records of CCRAB meetings from 2008-2013 which demonstrated 10 out of the 20 members being removed attended 3 or less meetings out of a total of 9 meetings held during that time period. The attendance records are on file with committee staff.

- A statutory teaching hospital affiliated with a community based cancer center
- Florida Association of the Pediatric Tumor Programs, Inc.
- Cancer Information Service
- Florida Agricultural and Mechanical University Institute of Public Health
- Florida Society of Oncology Social Workers

The CCRAB members will continue to serve without pay, but the bill removes an allowance for per diem and requires the institution or organization that a member represents to be responsible for travel reimbursement. If a member is not affiliated with an organization, the member must be reimbursed for travel expenses by Moffitt.

The bill removes the requirement that the CCRAB develop or purchase, make available to physicians and surgeons, and update written summaries regarding breast cancer and prostate cancer treatment alternatives when funds are appropriated for such purpose. The bill also removes the requirement that the CCRAB develop and implement educational programs about the early detection and treatment of breast cancer and prostate cancer.

The bill also makes conforming changes, regarding the removal of the requirement for the CCRAB to provide written summaries, by deleting the requirement for physicians to provide copies of the written summaries to patients or the patients' legal guardians.

The bill requires the CCRAB to formulate and recommend to the State Surgeon General a statewide research plan in addition to the current responsibility to recommend a plan for cancer care and treatment.

The bill deletes the Florida Cancer Control and Research Fund and, to conform to this change, the bill removes the requirement that the:

- CCRAB recommend the awarding of grants and contracts to qualified nonprofit associations or governmental agencies in order to plan, establish, or conduct programs in cancer control or prevention, cancer education and training, and cancer research.
- Board of Governors or the State Surgeon General award grants or contracts after consultation with CCRAB.
- Members of the CCRAB must refrain from participating in discussions or decisions to recommend grants or contracts to a qualified nonprofit association or any state agency, or its political subdivision, if the CCRAB member has an association or contractual relationship with that entity.

B. SECTION DIRECTORY:

Section 1. Amends s. 1004.435, F.S., relating to cancer control and research.

Section 2. Amends s. 458.324, F.S., relating to breast cancer and information on treatment alternatives.

Section 3. Amends s. 459.0125., F.S., relating to breast cancer and information on treatment alternatives.

Section 4. 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:

The Centers for Disease Control and Prevention grant funds that are awarded to the Department and used to reimburse Moffitt for members' travel will be redirected to other strategies within the Department's cancer-related programs.¹⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, Moffitt pays all members' travel reimbursement for CCRAB meetings, and then is reimbursed by the Department. The bill transfers the responsibility for travel costs reimbursement to each member's representative organization. Moffitt will continue to reimburse a member for travel costs if the member is not affiliated with an institution or organization, such as the member who is a current or former cancer patient or a current or former caregiver to a cancer patient, and for the Moffitt member on the CCRAB.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2014, the Health Quality Subcommittee adopted a technical amendment and reported the bill favorably as a committee substitute. The bill added the word "of" to "Association of Community Cancer Centers." This analysis is drafted to the committee substitute.

1 A bill to be entitled

2 An act relating to cancer control and research;
3 amending s. 1004.435, F.S.; revising definitions;
4 revising the membership of the Florida Cancer Control
5 and Research Advisory Council and selection of the
6 council chairperson; authorizing renewal of member
7 terms; revising compensation of council members;
8 requiring a statewide research plan; deleting council,
9 Board of Governors, and State Surgeon General duties
10 relating to the awarding of grants and contracts for
11 cancer-related programs; deleting council duties
12 relating to the development of written summaries of
13 treatment alternatives; deleting financial aid
14 provisions and the Florida Cancer Control and Research
15 Fund; amending ss. 458.324, and 459.0125, F.S.;
16 conforming provisions; providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Paragraphs (d) and (e) of subsection (3) and
21 subsections (4), (5), and (6) of section 1004.435, Florida
22 Statutes, are amended to read:

23 1004.435 Cancer control and research.—

24 (3) DEFINITIONS.—The following words and phrases when used
25 in this section have, unless the context clearly indicates
26 otherwise, the meanings given to them in this subsection:

27 ~~(d) "Fund" means the Florida Cancer Control and Research~~
 28 ~~Fund established by this section.~~

29 ~~(e) "Qualified nonprofit association" means any~~
 30 ~~association, incorporated or unincorporated, that has received~~
 31 ~~tax exempt status from the Internal Revenue Service.~~

32 (4) FLORIDA CANCER CONTROL AND RESEARCH ADVISORY COUNCIL;
 33 CREATION; COMPOSITION.—

34 (a) There is created within the H. Lee Moffitt Cancer
 35 Center and Research Institute, Inc., the Florida Cancer Control
 36 and Research Advisory Council. The council shall consist of 15
 37 ~~35~~ members, which includes the chairperson, all of whom must be
 38 residents of this state. The State Surgeon General or his or her
 39 designee within the Department of Health shall be one of the 15
 40 members. ~~All~~ Members, except those appointed by the Governor,
 41 the Speaker of the House of Representatives, or ~~and~~ the
 42 President of the Senate, must be appointed by the chief
 43 executive officer of the institution or organization
 44 represented, or his or her designee ~~Governor.~~ ~~At least one of~~
 45 ~~the members appointed by the Governor must be 60 years of age or~~
 46 ~~older.~~ One member must be a representative of the American
 47 Cancer Society; ~~one member must be a representative of the~~
 48 ~~Florida Tumor Registrars Association;~~ one member must be a
 49 representative of the Sylvester Comprehensive Cancer Center of
 50 the University of Miami; ~~one member must be a representative of~~
 51 ~~the Department of Health;~~ one member must be a representative of
 52 the University of Florida Shands Cancer Center; ~~one member must~~

53 ~~be a representative of the Agency for Health Care~~
 54 ~~Administration;~~ one member must be a representative of the
 55 Florida Nurses Association who specializes in the field of
 56 oncology; one member must be a representative of the Florida
 57 Osteopathic Medical Association who specializes in the field of
 58 oncology; ~~one member must be a representative of the American~~
 59 ~~College of Surgeons;~~ ~~one member must be a representative of the~~
 60 ~~School of Medicine of the University of Miami;~~ ~~one member must~~
 61 ~~be a representative of the College of Medicine of the University~~
 62 ~~of Florida;~~ ~~one member must be a representative of NOVA~~
 63 ~~Southeastern College of Osteopathic Medicine;~~ ~~one member must be~~
 64 ~~a representative of the College of Medicine of the University of~~
 65 ~~South Florida;~~ ~~one member must be a representative of the~~
 66 ~~College of Public Health of the University of South Florida;~~ ~~one~~
 67 ~~member must be a representative of the Florida Society of~~
 68 ~~Clinical Oncology;~~ ~~one member must be a representative of the~~
 69 ~~Florida Obstetric and Gynecologic Society who has had training~~
 70 ~~in the specialty of gynecologic oncology;~~ ~~one member must be a~~
 71 ~~representative of the Florida Ovarian Cancer Alliance Speaks~~
 72 ~~(FOCAS) organization;~~ one member must be a representative of the
 73 Florida Medical Association who specializes in the field of
 74 oncology; ~~one member must be a member of the Florida Pediatric~~
 75 ~~Society;~~ ~~one member must be a representative of the Florida~~
 76 ~~Radiological Society;~~ ~~one member must be a representative of the~~
 77 ~~Florida Society of Pathologists;~~ one member must be a
 78 representative of the H. Lee Moffitt Cancer Center and Research

79 Institute, Inc.; one member must be a representative of the
 80 Florida Hospital Association who specializes in the field of
 81 oncology; one member must be a representative of the Association
 82 of Community Cancer Centers; one member must specialize in
 83 pediatric oncology research or clinical care appointed by the
 84 Governor; one member must specialize in oncology clinical care
 85 or research appointed by the President of the Senate; one member
 86 must be a current or former cancer patient or a current or
 87 former caregiver to a cancer patient appointed by the Speaker of
 88 the House of Representatives ~~three members must be~~
 89 ~~representatives of the general public acting as consumer~~
 90 ~~advocates; one member must be a member of the House of~~
 91 ~~Representatives appointed by the Speaker of the House of~~
 92 ~~Representatives; and one member must be a member of the Senate~~
 93 ~~appointed by the President of the Senate; one member must be a~~
 94 ~~representative of the Florida Dental Association; one member~~
 95 ~~must be a representative of the Florida Hospital Association;~~
 96 ~~one member must be a representative of the Association of~~
 97 ~~Community Cancer Centers; one member shall be a representative~~
 98 ~~from a statutory teaching hospital affiliated with a community-~~
 99 ~~based cancer center; one member must be a representative of the~~
 100 ~~Florida Association of Pediatric Tumor Programs, Inc.; one~~
 101 ~~member must be a representative of the Cancer Information~~
 102 ~~Service; one member must be a representative of the Florida~~
 103 ~~Agricultural and Mechanical University Institute of Public~~
 104 ~~Health; and one member must be a representative of the Florida~~

105 ~~Society of Oncology Social Workers. Of the members of the~~
 106 ~~council appointed by the Governor,~~ At least four of the members
 107 ~~to~~ must be individuals who are minority persons as defined by s.
 108 288.703.

109 (b) The terms of the members shall be 4 years from their
 110 respective dates of appointment with the option of renewal.

111 (c) A chairperson shall be selected by the council
 112 ~~appointed by the Governor~~ for a term of 2 years. The chairperson
 113 shall appoint an executive committee of no fewer than three
 114 persons to serve at the pleasure of the chairperson. This
 115 committee will prepare material for the council but make no
 116 final decisions.

117 (d) The council shall meet no less than semiannually at
 118 the call of the chairperson or, in his or her absence or
 119 incapacity, at the call of the State Surgeon General. Eight
 120 ~~Sixteen~~ members constitute a quorum for the purpose of
 121 exercising all of the powers of the council. A vote of the
 122 majority of the members present is sufficient for all actions of
 123 the council.

124 (e) The council members shall serve without pay. Pursuant
 125 to the provisions of s. 112.061, the council members may be
 126 entitled to be reimbursed for ~~per diem and~~ travel expenses by
 127 the institution or organization the member represents. If a
 128 member is not affiliated with an institution or organization,
 129 the member shall be reimbursed for travel expenses by the H. Lee
 130 Moffitt Cancer Center and Research Institute, Inc.

131 ~~(f) No member of the council shall participate in any~~
 132 ~~discussion or decision to recommend grants or contracts to any~~
 133 ~~qualified nonprofit association or to any agency of this state~~
 134 ~~or its political subdivisions with which the member is~~
 135 ~~associated as a member of the governing body or as an employee~~
 136 ~~or with which the member has entered into a contractual~~
 137 ~~arrangement.~~

138 (f)~~(g)~~ The council may prescribe, amend, and repeal bylaws
 139 governing the manner in which the business of the council is
 140 conducted.

141 (g)~~(h)~~ The council shall advise the Board of Governors,
 142 the State Surgeon General, and the Legislature with respect to
 143 cancer control and research in this state.

144 (h)~~(i)~~ The council shall approve each year a program for
 145 cancer control and research to be known as the "Florida Cancer
 146 Plan" which shall be consistent with the State Health Plan and
 147 integrated and coordinated with existing programs in this state.

148 (i)~~(j)~~ The council shall formulate and recommend to the
 149 State Surgeon General a statewide research plan and a plan for
 150 the care and treatment of persons suffering from cancer and
 151 recommend the establishment of standard requirements for the
 152 organization, equipment, and conduct of cancer units or
 153 departments in hospitals and clinics in this state. The council
 154 may recommend to the State Surgeon General the designation of
 155 cancer units following a survey of the needs and facilities for
 156 treatment of cancer in the various localities throughout the

157 state. The State Surgeon General shall consider the plan in
 158 developing departmental priorities and funding priorities and
 159 standards under chapter 395.

160 (j)~~(k)~~ The council is responsible for including in the
 161 Florida Cancer Plan recommendations for the coordination and
 162 integration of medical, nursing, paramedical, lay, and other
 163 plans concerned with cancer control and research. Committees
 164 shall be formed by the council so that the following areas will
 165 be established as entities for actions:

166 1. Cancer plan evaluation: tumor registry, data retrieval
 167 systems, and epidemiology of cancer in the state and its
 168 relation to other areas.

169 2. Cancer prevention.

170 3. Cancer detection.

171 4. Cancer patient management: treatment, rehabilitation,
 172 terminal care, and other patient-oriented activities.

173 5. Cancer education: lay and professional.

174 6. Unproven methods of cancer therapy: quackery and
 175 unorthodox therapies.

176 7. Investigator-initiated project research.

177 ~~(l) In order to implement in whole or in part the Florida~~
 178 ~~Cancer Plan, the council shall recommend to the Board of~~
 179 ~~Governors or the State Surgeon General the awarding of grants~~
 180 ~~and contracts to qualified profit or nonprofit associations or~~
 181 ~~governmental agencies in order to plan, establish, or conduct~~
 182 ~~programs in cancer control or prevention, cancer education and~~

183 ~~training, and cancer research.~~

184 ~~(m) If funds are specifically appropriated by the~~
 185 ~~Legislature, the council shall develop or purchase standardized~~
 186 ~~written summaries, written in layperson's terms and in language~~
 187 ~~easily understood by the average adult patient, informing actual~~
 188 ~~and high-risk breast cancer patients, prostate cancer patients,~~
 189 ~~and men who are considering prostate cancer screening of the~~
 190 ~~medically viable treatment alternatives available to them in the~~
 191 ~~effective management of breast cancer and prostate cancer,~~
 192 ~~describing such treatment alternatives, and explaining the~~
 193 ~~relative advantages, disadvantages, and risks associated~~
 194 ~~therewith. The breast cancer summary, upon its completion, shall~~
 195 ~~be printed in the form of a pamphlet or booklet and made~~
 196 ~~continuously available to physicians and surgeons in this state~~
 197 ~~for their use in accordance with s. 458.324 and to osteopathic~~
 198 ~~physicians in this state for their use in accordance with s.~~
 199 ~~459.0125. The council shall periodically update both summaries~~
 200 ~~to reflect current standards of medical practice in the~~
 201 ~~treatment of breast cancer and prostate cancer. The council~~
 202 ~~shall develop and implement educational programs, including~~
 203 ~~distribution of the summaries developed or purchased under this~~
 204 ~~paragraph, to inform citizen groups, associations, and voluntary~~
 205 ~~organizations about early detection and treatment of breast~~
 206 ~~cancer and prostate cancer.~~

207 ~~(k)~~ (n) The council shall have the responsibility to advise
 208 the Board of Governors and the State Surgeon General on methods

209 of enforcing and implementing laws already enacted and concerned
 210 with cancer control, research, and education.

211 (l)~~(e)~~ The council may recommend to the Board of Governors
 212 or the State Surgeon General rules not inconsistent with law as
 213 it may deem necessary for the performance of its duties and the
 214 proper administration of this section.

215 (m)~~(p)~~ The council shall formulate and put into effect a
 216 continuing educational program for the prevention of cancer and
 217 its early diagnosis and disseminate to hospitals, cancer
 218 patients, and the public information concerning the proper
 219 treatment of cancer.

220 (n)~~(q)~~ The council shall be physically located at the H.
 221 Lee Moffitt Cancer Center and Research Institute, Inc., at the
 222 University of South Florida.

223 (o)~~(r)~~ The council shall select, by majority vote, seven
 224 members of the council who must combine with six members of the
 225 Biomedical Research Advisory Council to form a joint committee
 226 to develop performance measures, a rating system, a rating
 227 standard, and an application form for the Cancer Center of
 228 Excellence Award created in s. 381.925.

229 (p)~~(s)~~ On February 15 of each year, the council shall
 230 report to the Governor and to the Legislature.

231 (5) RESPONSIBILITIES OF ~~THE BOARD OF GOVERNORS,~~ THE H. LEE
 232 MOFFITT CANCER CENTER AND RESEARCH INSTITUTE, INC., ~~AND THE~~
 233 ~~STATE SURGEON GENERAL.~~

234 ~~(a) The Board of Governors or the State Surgeon General,~~

235 ~~after consultation with the council, shall award grants and~~
 236 ~~contracts to qualified nonprofit associations and governmental~~
 237 ~~agencies in order to plan, establish, or conduct programs in~~
 238 ~~cancer control and prevention, cancer education and training,~~
 239 ~~and cancer research.~~

240 ~~(b) The H. Lee Moffitt Cancer Center and Research~~
 241 ~~Institute, Inc., shall provide such staff, information, and~~
 242 ~~other assistance as reasonably necessary for the completion of~~
 243 ~~the responsibilities of the council.~~

244 ~~(c) The department may furnish to citizens of this state~~
 245 ~~who are afflicted with cancer financial aid to the extent of the~~
 246 ~~appropriation provided for that purpose in a manner which in its~~
 247 ~~opinion will afford the greatest benefit to those afflicted and~~
 248 ~~may make arrangements with hospitals, laboratories, or clinics~~
 249 ~~to afford proper care and treatment for cancer patients in this~~
 250 ~~state.~~

251 ~~(6) FLORIDA CANCER CONTROL AND RESEARCH FUND.~~

252 ~~(a) There is created the Florida Cancer Control and~~
 253 ~~Research Fund consisting of funds appropriated therefor from the~~
 254 ~~General Revenue Fund and any gifts, grants, or funds received~~
 255 ~~from other sources.~~

256 ~~(b) The fund shall be used exclusively for grants and~~
 257 ~~contracts to qualified nonprofit associations or governmental~~
 258 ~~agencies for the purpose of cancer control and prevention,~~
 259 ~~cancer education and training, cancer research, and all expenses~~
 260 ~~incurred in connection with the administration of this section~~

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261 ~~and the programs funded through the grants and contracts~~
 262 ~~authorized by the State Board of Education or the State Surgeon~~
 263 ~~General.~~

264 Section 2. Subsections (1) and (2) of section 458.324,
 265 Florida Statutes, are amended to read:

266 458.324 Breast cancer; information on treatment
 267 alternatives.-

268 (1) DEFINITION.—As used in this section, the term
 269 "medically viable," as applied to treatment alternatives, means
 270 modes of treatment generally considered by the medical
 271 profession to be within the scope of current, acceptable
 272 standards, ~~including treatment alternatives described in the~~
 273 ~~written summary prepared by the Florida Cancer Control and~~
 274 ~~Research Advisory Council in accordance with s. 1004.435(4)(m).~~

275 (2) COMMUNICATION OF TREATMENT ALTERNATIVES.—

276 (a) Each physician treating a patient who is, or in the
 277 judgment of the physician is at high risk of being, diagnosed as
 278 having breast cancer shall inform such patient of the medically
 279 viable treatment alternatives available to such patient; shall
 280 describe such treatment alternatives; and shall explain the
 281 relative advantages, disadvantages, and risks associated with
 282 the treatment alternatives to the extent deemed necessary to
 283 allow the patient to make a prudent decision regarding such
 284 treatment options. In compliance with this subsection, +

285 ~~(a)~~ the physician may, in his or her discretion, +

286 ~~+~~ orally communicate such information directly to the

287 patient or the patient's legal representative;

288 ~~2. Provide the patient or the patient's legal~~
 289 ~~representative with a copy of the written summary prepared in~~
 290 ~~accordance with s. 1004.435(4) (m) and express a willingness to~~
 291 ~~discuss the summary with the patient or the patient's legal~~
 292 ~~representative; or~~

293 ~~3. Both communicate such information directly and provide~~
 294 ~~a copy of the written summary to the patient or the patient's~~
 295 ~~legal representative for further consideration and possible~~
 296 ~~later discussion.~~

297 (b) In providing such information, the physician shall
 298 take into consideration the emotional state of the patient, the
 299 physical state of the patient, and the patient's ability to
 300 understand the information.

301 (c) The physician may, in his or her discretion and
 302 without restriction, recommend any mode of treatment which is in
 303 his or her judgment the best treatment for the patient.

304

305 Nothing in this subsection shall reduce other provisions of law
 306 regarding informed consent.

307 Section 3. Subsections (1) and (2) of section 459.0125,
 308 Florida Statutes, are amended to read:

309 459.0125 Breast cancer; information on treatment
 310 alternatives.—

311 (1) DEFINITION.—As used in this section, the term
 312 "medically viable," as applied to treatment alternatives, means

313 modes of treatment generally considered by the medical
 314 profession to be within the scope of current, acceptable
 315 standards, ~~including treatment alternatives described in the~~
 316 ~~written summary prepared by the Florida Cancer Control and~~
 317 ~~Research Advisory Council in accordance with s. 1004.435(4)(m).~~

318 (2) COMMUNICATION OF TREATMENT ALTERNATIVES.-

319 (a) It is the obligation of every physician treating a
 320 patient who is, or in the judgment of the physician is at high
 321 risk of being, diagnosed as having breast cancer to inform such
 322 patient of the medically viable treatment alternatives available
 323 to such patient; to describe such treatment alternatives; and to
 324 explain the relative advantages, disadvantages, and risks
 325 associated with the treatment alternatives to the extent deemed
 326 necessary to allow the patient to make a prudent decision
 327 regarding such treatment options. In compliance with this
 328 subsection, +

329 ~~(a)~~ the physician may, in her or his discretion, +

330 ~~1-~~ orally communicate such information directly to the
 331 patient or the patient's legal representative ~~+~~

332 ~~2. Provide the patient or the patient's legal~~
 333 ~~representative with a copy of the written summary prepared in~~
 334 ~~accordance with s. 1004.435(4)(m) and express her or his~~
 335 ~~willingness to discuss the summary with the patient or the~~
 336 ~~patient's legal representative; or~~

337 ~~3. Both communicate such information directly and provide~~
 338 ~~a copy of the written summary to the patient or the patient's~~

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339 ~~legal representative for further consideration and possible~~
 340 ~~later discussion.~~

341 (b) In providing such information, the physician shall
 342 take into consideration the emotional state of the patient, the
 343 physical state of the patient, and the patient's ability to
 344 understand the information.

345 (c) The physician may, in her or his discretion and
 346 without restriction, recommend any mode of treatment which is in
 347 the physician's judgment the best treatment for the patient.

348
 349 Nothing in this subsection shall reduce other provisions of law
 350 regarding informed consent.

351 Section 4. 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 & Human Services
2 Committee
3 Representative Coley offered the following:

Amendment

6 Remove line 56 and insert:
7 oncology and is not from an institution or organization already
8 represented on the council; one member must be a representative
9 of the Florida



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 & Human Services
 2 Committee
 3 Representative Coley offered the following:

Amendment

Remove lines 72-81 and insert:

7 ~~(FOCAS) organization;~~ one member must be a member representative
 8 of the Florida Medical Association who specializes in the field
 9 of oncology and who represents a cancer center not already
 10 represented on the council; ~~one member must be a member of the~~
 11 ~~Florida Pediatric Society;~~ ~~one member must be a representative~~
 12 ~~of the Florida Radiological Society;~~ ~~one member must be a~~
 13 ~~representative of the Florida Society of Pathologists;~~ one
 14 member must be a representative of the H. Lee Moffitt Cancer
 15 Center and Research Institute, Inc.; one member must be a member
 16 of the Florida Hospital Association who specializes in the field
 17 of oncology and who represents a comprehensive cancer center not



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 511 (2014)

Amendment No. 2

18 already represented on the council; one member must be a
19 representative of the Association

20



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 & Human Services
 2 Committee
 3 Representative Coley offered the following:

Amendment (with title amendment)

Remove lines 146-161 and insert:

7 Control and Research Plan" which shall be consistent with the
 8 State Health Plan and integrated and coordinated with existing
 9 programs in this state.

10 ~~(i)-(j)~~ The council shall collaborate with the Florida
 11 Biomedical Research Advisory Council to formulate and annually
 12 review and recommend to the State Surgeon General a statewide
 13 research plan. Additionally, the council shall develop and
 14 annually review a statewide "Florida Cancer Treatment Plan" plan
 15 for the care and treatment of persons suffering from cancer. The
 16 council shall ~~and~~ recommend the establishment of standard
 17 requirements for the organization, equipment, and conduct of



Amendment No. 3

18 cancer units or departments in hospitals and clinics in this
19 state. The council may recommend to the State Surgeon General
20 the designation of cancer units following a survey of the needs
21 and facilities for treatment of cancer in the various localities
22 throughout the state. The State Surgeon General shall consider
23 the plans ~~plan~~ in developing departmental priorities and funding
24 priorities and standards under chapter 395.



25 (j) ~~(k)~~ The council is responsible for including in the
26 Florida Cancer Control and Research Plan recommendations for the
27 coordination and
28
29
30

31 -----
32 **T I T L E A M E N D M E N T**

33 Remove line 8 and insert:
34 renaming the Florida Cancer Plan; requiring the council to
35 collaborate with the Biomedical Research Advisory Council to
36 formulate and review a statewide research plan; requiring the
37 council to develop and review a statewide treatment plan;
38 deleting council,
39

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 203 Unaccompanied Youth
SPONSOR(S): Civil Justice Subcommittee; Raulerson and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Aziz	Bond
2) Health & Human Services Committee		Entress 	Calamas 
3) Judiciary Committee			

SUMMARY ANALYSIS

In general, a minor may not consent to his or her own routine medical and dental care. Florida law requires that a parent or guardian consent to treatment.

The bill changes the term "unaccompanied youth" to "unaccompanied homeless youth" and specifies that an unaccompanied homeless youth, age 16 or over, may consent to medical treatment. The bill specifies that medical treatment includes, dental, psychological, substance abuse, and other medical care by a licensed facility on behalf of himself or herself, or his or her child.

The bill specifies that minors who qualify as unaccompanied homeless youth must be issued a written certificate. The bill allows licensed clinical social workers and circuit courts, in addition to those already named in statute, to issue such certificates.

The bill allows a health care provider to accept the written certificate as proof of the minor's status as an unaccompanied homeless youth and specifies that the health care provider may keep a copy of the certificate.

The bill specifies that it does not affect the requirements of the "Parental Notice of Abortion Act."

The bill does not appear to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Homelessness

There are roughly 45,000 people facing homelessness in Florida.¹ In the 2011-12 school year, 63,685 school-aged children were identified as homeless at some point during the school year.²

According to the National Alliance to End Homelessness, the prevalence of youth homelessness is difficult to measure; however, researchers estimate that perhaps 1.6 million youth, aged 13-17, are homeless in the U.S.³ While the reasons for youth homelessness vary by individual, the primary causes appear to be a family breakdown or a systems failure of mainstream programs like child welfare, juvenile corrections, and mental health programs.⁴ Between 20,000 and 25,000 youth ages 16 and older transition from foster care to legal emancipation, or “age out” of the system annually with few resources and multiple challenges.⁵ As a result, former foster care youth are disproportionately represented in the homeless population. Twenty-five percent of former foster youth nationwide report that they have been homeless at least one night within two-and-a-half to four years after exiting foster care.⁶

Federal law defines “homeless children and youths” as follows:

- (a) Individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302 (a)(1) of this title); and
- (b) Includes—
 - (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
 - (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302 (a)(1) of this title);
 - (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

¹ Council on Homelessness Annual Report 2013. Florida Department of Children and Families, *accessible at*: <http://www.dcf.state.fl.us/programs/homelessness/docs/2013CouncilReport.pdf> (last visited February 26, 2014).

² *Id.*

³ The Heterogeneity of Homeless Youth in America, National Alliance to End Homelessness, September 2011 *accessible at*: <http://www.endhomelessness.org/library/entry/the-heterogeneity-of-homeless-youth-in-america-examining-typologies> (last visited March 17, 2014).

⁴ Fundamental Issues to Prevent and End Youth Homelessness, Youth Homelessness Series, Brief No. 1, National Alliance to End Homelessness, May 2006, *accessible at*: <http://www.endhomelessness.org/library/entry/fundamental-issues-to-prevent-and-end-youth-homelessness> (last visited March 17, 2014).

⁵ *Id.*

⁶ *Id.*

(iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (1) through (iii).⁷

The term, "unaccompanied youth," is defined in federal law as a youth not in the physical custody of a parent or guardian.⁸ Unaccompanied homeless youth, because of their disability of nonage and finances, face particular challenges in seeking routine health care. They disproportionately suffer higher rates of mental illness, substance abuse, pregnancy and sexually transmitted diseases.⁹ While current law allows minors to consent to care for pregnancy and sexually transmitted diseases¹⁰, there is no statute which allows unaccompanied homeless youth to consent to general health and dental care.

Disabilities of Nonage

Disability of nonage refers to a minor's lack of legal ability to enter into binding contracts.¹¹ However, minors who meet certain conditions can be granted the same rights as an adult. This process is known in current law as "having the disabilities of nonage removed."¹² In the case of a minor who has had the court remove the disabilities of nonage, a court would authorize the minor to perform all acts that a person could do if he or she was 18 years of age or older.¹³

Under current law, a minor may receive emergency medical care without parental consent.¹⁴ A minor may consent to services relating to pregnancy¹⁵, treatment of sexually transmitted diseases¹⁶, and substance abuse.¹⁷ The question of consent to general medical and dental care on behalf of a homeless unaccompanied minor, or the child of such a minor, has not been addressed by Florida law.

School District Homeless Liaison

The Florida Department of Education has established a "school district homeless liaison" for each of the 67 counties.¹⁸ The duties of the liaison include:¹⁹

- Assisting homeless children and youth who do not have immunizations or medical records to obtain necessary immunizations or medical records;
- Helping unaccompanied youth enroll in a school;
- Approving homeless students' eligibility for free lunch; and
- Providing homeless youth with access to all programs and services available to other students.²⁰

⁷ 42 U.S.C. s. 11434a.

⁸ *Id.*

⁹ Yvonne Vissing, *Homeless Children and Youth: An Examination of Legal Challenges and Directions*, 13 J.L. Society 455, 504 (2012).

¹⁰ See ss. 381.0051, 743.065, and 384.30, F.S.

¹¹ 25 Fla. Jur 2d Family Law § 240.

¹² See ss. 743.01 (marriage), 743.015 (petition by guardian or guardian ad litem), and 743.067 (petition by unaccompanied youth), F.S.

¹³ S. 743.015, F.S.

¹⁴ S. 743.064, F.S.

¹⁵ S. 743.065, F.S. However, such care will not affect the requirements of the Parental Notice of Abortion Act. *Id.* Minors may also receive maternal health and contraceptive information and services of a nonsurgical nature. Section 381.0051(4), F.S. Furthermore, an unwed minor mother may consent to the performance of medical or surgical care or services for her child. Section 743.065, F.S.

¹⁶ Section 384.30, F.S.

¹⁷ Section 397.601(4)(a), F.S.

¹⁸ Florida Department of Education, District Liaison List, *accessible at*:

<http://search.fldoe.org/default.asp?cx=012683245092260330905%3Aaalo4lmikqz4&cof=FORID%3A11&q=school+district+homeless+liaison> (last visited February 26, 2014).

¹⁹ *Id.*

Emergency Shelter Program funded by U.S. Department of Housing and Urban Development

The Emergency Shelter Program is operated by the Department of Housing and Urban Development and is designed as the first step in the Continuum of Care. The Emergency Shelter Grants Program provides funds for emergency shelters and transitional housing with appropriate support services to help individuals reach independent living. States use grant funds to operate these facilities, provide essential social services, and prevent homelessness.²¹ The providers of service must document that any youth served meets the federal definition of a homeless person.²²

Runway or Homeless Basic Youth Centers and Transitional Living Programs funded by U.S. Health and Human Services

The Basic Center Program works to establish or strengthen community-based programs that meet the immediate needs of runaway and homeless youth and their families.²³ The programs provide youth through age 18 with emergency shelter, food, clothing, counseling and referrals for health care.²⁴ Basic centers seek to reunite young people with their families, whenever possible, or to locate appropriate alternative placements.²⁵

The Transitional Living Programs supports projects that provide long-term residential services to homeless youth.²⁶ The Program accepts youth ages 16-21.²⁷ Transitional living programs are required to provide youth with stable, safe living accommodations, and services that help them develop the skills necessary to become independent.²⁸ Living accommodations may include host-family homes, group homes, maternity group homes, or supervised apartments owned by the program or rented in the community.²⁹

Clinical Social Worker Licensed under Chapter 491, F.S.

A clinical social worker is a person who has a master's or doctoral degree in social work and evaluates, assesses, diagnoses and treats emotional and mental disorders, behavioral disorders, and substance abuse.³⁰ To be licensed under ch. 491, F.S., a social worker must have a degree from an accredited

²⁰ *The Education of Homeless Children and Youth*, U.S. Department of Health and Human Services, Administration for Children and Families, Fact Sheet, , *accessible at*: https://www.google.com/url?q=http://www.fldoe.org/bsa/title1/pdf/homeless_tap_08_23_051.pdf&sa=U&ei=_yQnU6mOFYyIkQfRIYGoDA&ved=0CAYQFjAB&client=internal-uds-cse&usg=AFQjCNFZ1J0cRlqZ2O-9A4XrNKK_dWe2XQ (last visited March 17, 2014).

²¹ U.S. Department of Housing and Homeless Development, Homelessness Resource Exchange, *accessible at*: <http://www.hudhre.info/index.cfm?do=viewEsgProgram> (last visited February 26, 2014).

²² U.S. Department of Housing and Homeless Development, Emergency Shelter Grant Desk Guide, Program Requirements and Responsibilities, *accessible at*: <https://www.onecpd.info/resource/829/emergency-shelter-grants-program-desk-guide/> (last visited February 26, 2014).

²³ U.S. Department of Health and Human Services, Administration for Children and Families, Fact Sheet Basic Center Program, *accessible at*: <http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/bcpfactsheet.htm> (last visited February 26, 2014).

²⁴ *Id.*

²⁵ *Id.*

²⁶ U.S. Department of Health and Human Services, Administration for Children and Families, Fact Sheet Transitional Program, *accessible at*: <http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/bcpfactsheet.htm> (last visited February 26, 2014).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Section 491.003, F.S.

school, have two years of experience in clinical social work under supervision, and pass a test issued by the state.³¹

Effect of the Bill

The bill changes the term "unaccompanied youth" to "unaccompanied homeless youth" in s. 743.067, F.S., related to the removal of disability of nonage of minors. The bill reorganizes the definition of the term and allows a licensed clinical social worker (LCSW) and a circuit court to certify an individual as an unaccompanied homeless youth, in addition to those who are currently able to certify unaccompanied youth in current law.

The bill specifies that minors who qualify as unaccompanied homeless youth must be issued a written certificate documenting this status. The bill requires the appropriate individual (either the school district homeless liaison, director of emergency shelter program, director of a runaway or homeless youth basic center, LCSW, or a circuit court) to issue this certificate. The bill specifies that the certificate must be issued on the official letterhead stationery of the person making the determination and must include:

- The date of the finding,
- A citation to s. 743.067, F.S., and
- The signature of the individual making the finding.

The bill authorizes an unaccompanied homeless youth to consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment. The bill specifies that this includes preventative care and care by a licensed mental health facility, hospital, and substance abuse treatment facility. The bill also allows unaccompanied homeless youth to consent to a forensic medical exam.³² The bill allows such youth to consent to medical care for his or her own child if he or she is unmarried, is the parent of the child, and has custody of the child.

The bill allows a health care provider to accept the written certificate as proof of the minor's status as an unaccompanied homeless youth. The bill specifies that the health care provider may keep a copy of the certificate in the youth's file.

The bill also provides that it does not affect the requirements of the "Parental Notice of Abortion Act."³³

B. SECTION DIRECTORY:

Section 1: Amends s. 743.067, F.S. relating to unaccompanied youth.

Section 2: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

³¹ Section 491.005(1), F.S.

³² A forensic medical exam is conducted on a crime victim.

³³ Section 390.01114, F.S., requires a physician performing or inducing the termination of pregnancy for a minor to provide parental notice 48 hours before performing a termination procedure on a minor, unless waived by a parent or otherwise ordered by a judge.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government revenues.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Changed the term “unaccompanied youth” to “unaccompanied homeless youth”;
- Provided that a licensed clinical social worker or a circuit court may also certify a youth as an “unaccompanied homeless youth”; and
- Required issuance of a certificate to an unaccompanied homeless youth.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to unaccompanied homeless youth;
 3 amending s. 743.067, F.S.; defining the term
 4 "unaccompanied homeless youth"; providing for a
 5 certification; authorizing certain unaccompanied
 6 homeless youths to consent to medical, dental,
 7 psychological, substance abuse, and surgical diagnosis
 8 and treatment, and forensic medical examinations for
 9 themselves and for their children in certain
 10 circumstances; providing that such consent does not
 11 affect the requirements of the Parental Notice of
 12 Abortion Act; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 743.067, Florida Statutes, is amended
 17 to read:

18 743.067 Unaccompanied homeless youths.—

19 (1) As used in this section, the term an "unaccompanied
 20 homeless youth" means an individual, as defined in 42 U.S.C. s.
 21 11434a, who is also a certified homeless youth, as defined in s.
 22 382.002, and who is 16 years of age or older and is:

23 (a) Found by a school district's liaison for homeless
 24 children and youths to be an unaccompanied homeless youth
 25 eligible for services pursuant to the federal McKinney-Vento
 26 Homeless Assistance Act, 42 U.S.C. ss. 11431-11435; or

27 (b) Believed to qualify as an unaccompanied homeless
 28 youth, as that term is defined in the McKinney-Vento Homeless
 29 Assistance Act, by:

30 1. The director of an emergency shelter program funded by
 31 the United States Department of Housing and Urban Development or
 32 the director's designee;

33 2. The director of a runaway or homeless youth basic
 34 center or transitional living program funded by the United
 35 States Department of Health and Human Services or the director's
 36 designee;

37 3. A clinical social worker licensed under chapter 491; or

38 4. A circuit court.

39 (2) A minor who qualifies as an unaccompanied homeless
 40 youth shall be issued a written certificate documenting his or
 41 her status by the appropriate individual as provided in
 42 subsection (1). The certificate shall be issued on the official
 43 letterhead stationery of the person making the determination and
 44 shall include the date of the finding, a citation to this
 45 section, and the signature of the individual making the finding.
 46 A health care provider may accept the written certificate as
 47 proof of the minor's status as an unaccompanied homeless youth
 48 and may keep a copy of the certificate in the youth's medical
 49 file.

50 (3) An unaccompanied homeless youth may:

51 (a) Petition the circuit court to have the disabilities of
 52 nonage removed under s. 743.015. The youth shall qualify as a

53 | person not required to prepay costs and fees as provided in s.
 54 | 57.081. The court shall advance the cause on the calendar.

55 | (b) Consent to medical, dental, psychological, substance
 56 | abuse, and surgical diagnosis and treatment, including
 57 | preventative care and care by a facility licensed under chapter
 58 | 394, chapter 395, or chapter 397 and a forensic medical
 59 | examination for the purpose of investigating a felony offense
 60 | under chapter 784, chapter 787, chapter 794, chapter 800, or
 61 | chapter 827, for:

- 62 | 1. Himself or herself; or
 63 | 2. His or her child, if the unaccompanied homeless youth
 64 | is unmarried, is the parent of the child, and has actual custody
 65 | of the child.

66 | (4) This section does not affect the requirements of s.
 67 | 390.01114.

68 | Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HHSC 14-01 State Employee Group Health Plan

SPONSOR(S): Health & Human Services Committee; Brodeur

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health & Human Services Committee		Shaw	Calamas

SUMMARY ANALYSIS

The State Group Insurance Program (program), administered by the Department of Management Services (DMS), is an optional benefit for employees that includes health, life, dental, vision, disability, and other supplemental insurance benefits. The program offers employees a choice among a health maintenance organization (HMO) plan, preferred provider plan (PPO) plan, and a high-deductible health plan (HDHP) with a health saving account (HSA). However, only one benefit level is offered for each plan type. Additionally, the employee's premium for the HMO and PPO are the same, even though the HMO provides greater benefits.

The bill directs DMS to establish employee contribution rates for 2015 plan year that reflect the full actuarial benefit difference between the HMO and the PPO. The PPO contribution rate must be less than the employee contribution level for the 2014 plan year. Consequently, next year employees will be given a choice between paying more for the higher value HMO and paying less, compared to the prior year, for the lower value PPO. Employees will have a choice between richer benefits and greater take-home pay.

The bill adds new products and services to the program by giving DMS broad authority to contract for a wide variety of additional products and services. Employees will be able to purchase these new products as optional benefits. DMS is directed to contract with at least one entity that provides comprehensive pricing and inclusive services for surgery and other types of medical procedures.

Beginning in 2015, DMS is directed to implement a 3-year price transparency pilot project in at least one, but no more than three areas of the state. The purpose of the pilot is to reward value-based pricing by publishing the prices of certain diagnostic and surgical procedures and sharing any savings generated by the enrollee's choice of providers. Participation in the project will be voluntary for state employees.

Beginning in the 2017 plan year, the bill provides that state employees will have health plan choices at four different benefit levels. If the state's contribution for premium is more than the cost of the plan selected by the employee, then the employee may use the remainder to:

- Fund a flexible spending arrangement.
- Fund a health savings account.
- Purchase additional benefits offered through the state group insurance program.
- Increase the employee's salary.

The bill directs DMS to hire an independent benefits consultant (IBC). The IBC will assist DMS in developing a plan for the implementation of the new benefit levels in the state program. The plan shall be submitted to the Governor, the President of the Senate and the Speaker of the House of Representatives no later than January 1, 2016. The IBC will also provide ongoing assessments and analysis for the program.

The state may experience both costs and savings. See fiscal comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

State Group Insurance Program

Overview

The State Group Insurance Program (program) is created by s. 110.123, F.S., and is administered by the Division of State Group Insurance (DSGI) within the Department of Management Services (DMS or department).

The program is an optional benefit for all state employees including all state agencies, state universities, the court system, and the Legislature. The program includes health, life, dental, vision, disability, and other supplemental insurance benefits.

The health insurance benefit for active employees has premium rates for single, spouse program¹, or family coverage regardless of plan selection. The state contributes approximately 90% toward the total annual premium for active employees for a total of \$1.55 billion out of total premium of \$2 billion for FY 2013-14². The enrollees contribute \$393 million and remaining \$89 million is from other sources such as interest, refunds, and rebates.

Cafeteria Plans

A cafeteria plan is a plan that offers flexible benefits under the Internal Revenue Code Section 125. Employees choose from a "menu" of benefits. The plan can provide a number of selections, including medical, accident, disability, vision, dental and group term life insurance. It can reimburse actual medical expenses or pay children's day care expenses.

A cafeteria plan reduces both the employer's and employee's tax burden. Contributions by the employer are not subject to the employer social security contribution. Contributions made by the employee are not subject to federal income or social security taxes.

The employer chooses the range of benefits it wishes to offer in a cafeteria plan. The plan can be a simple premium only plan where the only health insurance is offered. Full flex plans, which offer a wide variety of benefits and choices, are more often offered by large employers and allow for more consumer-directed consumption of benefits. In some full flex plans, the employee is offered the choice between receiving additional compensation in lieu of benefits.

The state program qualifies as a cafeteria plan³ even though the program offers relatively narrow health plan options compared to other cafeteria plans.

Health Plan Options

The program provides limited options for employees to choose as their health plans. The preferred provider organization (PPO) plan is the statewide, self-insured health plan administered by Florida Blue, whose current contract is for the 2015 through 2018 plan years. The administrator is responsible for processing health claims, providing access to a Preferred Provider Care Network, and managing customer service, utilization review, and case management functions. The standard health

¹ The Spouse Program provides discounted rates for family coverage when both spouses work for the state.

² Fiscal information provided by DSGI.

³ 26 USC sec. 125 requires that a cafeteria plan allow its members to choose between two or more benefits "consisting of cash and qualified benefits." The proposed regulations define "cash" to include a "salary reduction arrangement" whereby salary is deducted pre-tax to pay the employee's share of the insurance premium. Since the state program allows a "salary reduction arrangement", the program qualifies as a cafeteria plan. 26 C.F.R. ss. 1.125-1, et seq.

maintenance organization (HMO) plan is an insurance arrangement in which the state has contracted with multiple statewide and regional HMOs⁴.

Prior to the 2011 plan year, the participating HMOs were fully insured; in other words, the HMOs assumed all financial risk for the covered benefits. During the 2010 session, the Legislature enacted s. 110.12302, F.S., which directed DMS to require costing options for both fully insured and self-insured plan designs as part of the department's solicitation for health maintenance organization contracts for the 2012 plan year and beyond. The department included these costing options in its Invitation to Negotiate⁵ to HMOs for contracts for plans years beginning January 1, 2012. The department entered into contracts for the 2012 and 2013 plan years with two HMOs with a fully insured plan design and four with a self-insured plan design. The contracts with the HMOs have been renewed for the 2014 and 2015 plan years.

Additionally, the program offers two high-deductible health plans (HDHP⁶) with health savings accounts⁷. The Health Investor PPO Plan is the statewide, high deductible health plan with an integrated health saving account. It is also administered by Florida Blue. The Health Investor HMO Plan is a high deductible health plan with an integrated health saving account in which the state has contracted with multiple state and regional HMOs. Both have an individual deductible of \$1,250 for individual and \$2,500 for family for network providers. The state makes a \$500 per year contribution to the health savings account for single coverage and a \$1,000 per year contribution for family coverage. The employee may make additional annual contributions⁸ to a limit of \$3,330 for single coverage and \$6,550 for family coverage. Both the employer and employee contributions are not subject to federal income tax on the employee's income. Unused funds roll over automatically every year. A health savings account is owned by the employee and is portable.

The following charts illustrate the benefit design of each of the plan choices:

	HMO Standard	PPO Standard	
	Network Only	Network	Out-of-Network
Deductible	None	\$250 \$500 Single Family	\$750 \$1,500 Single Family
Primary Care	\$20 copayment	\$15 copayment	40% of out-of-network allowance plus the amount between the charge and the allowance
Specialist	\$40 copayment	\$25 copayment	
Urgent Care	\$25 copayment	\$25 copayment	
Emergency Room	\$100 copayment	\$100 copayment	
Hospital Stay	\$250 copayment	20% after \$250 copayment	40% after \$500 copayment plus the amount between the charge and the allowance
Generic Preferred Non-Preferred Prescriptions	\$7 \$30 \$50 Retail	\$7 \$30 \$50 Retail	Pay in full, file claim
	\$14 \$60 \$100 Mail Order	\$14 \$60 \$100 Mail Order	

⁴The HMOs include Aetna, AvMed, Capital Health Plan, Coventry Health Care of Florida, and UnitedHealthcare.

⁵ ITN NO.: DMS 10/11-011

⁶ High-deductible health plans with linked health savings accounts are also call consumer-directed health plans (CDHP) because costs of health care are more visible to the enrollee.

⁷ 26 USC sec. 223. To qualify as a high-deductible plan, the annual deductible must be at least \$1,250 for single plans and \$2,500 for family coverage, but annual out-of-pocket expenses cannot exceed \$6,350 for individual and \$12,700 for family coverage. These amounts are adjusted annually by the IRS.

⁸ The IRS annually sets the contribution limit as adjusted by inflation.

Out-of-Pocket Maximum	\$1,500 \$3,000 Single Family	\$2,500 \$5,000 (coinsurance only) Single Family
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	PPO and HMO Health Investor	
	Network	Out-of-Network (PPO Only)
Deductible	\$1,250 \$2,500 Single Family	\$2,500 \$5,000 Single Family
Primary Care	After meeting deductible, 20% of network allowed amount	After meeting deductible, 40% of out-of-network allowance plus the amount between the charge and the allowance
Specialist		
Urgent Care		
Emergency Room		
Hospital Stay		
Generic Preferred Non-Preferred Prescriptions	After meeting deductible, 30% 30% 50% Retail and Mail Order	Pay in full, file claim
Out-of-Pocket Maximum	\$3,000 \$6,000 (coinsurance only) Single Family	\$7,500 \$15,000 (coinsurance only) Single Family

Flexible Spending Accounts

Currently, the state program offers flexible spending accounts (FSAs)⁹ as an optional benefit for employees. The FSA is funded through pre-tax payroll deductions from the employee's salary¹⁰. The funds can be used to pay for medical expenses that are not covered by the employees' health plan. Prior to 2013, there was no limit on the contribution to a FSA; however, is now limited to \$2,500 and subsequently adjusted for inflation. Unlike a HSA, a FSA is a "use it or lose it" arrangement.¹¹ If the employee does not annually use the contributions to the FSA, the contributions are forfeited.

Employer and Employee Contributions

The state program is considered employer-sponsored since the state contracts with providers and contributes a substantial amount on behalf of the employee toward the cost of the insurance premium. The state's employer contribution is part of a state employee's overall compensation. The state program is a defined-benefit program. The employee pays a set monthly premium for either a single or

⁹ Sec. 125 I.R.C.; see IRS Publication 969 (2013) available at http://www.irs.gov/publications/p969/ar02.html#en_US_2013_publink1000204174 (last viewed 3/16/14).

¹⁰ Employers are also allowed to contribute to FSAs.

¹¹ Beginning in 2013, an employee may carryover up to \$500 into the next calendar year.

family plan. The state pays the remainder of the cost of the premium. In a defined-contribution program, the employer pays a set amount toward the monthly premium and the employee pays the remainder.

The following chart shows the monthly contributions¹² for the state and the employee to employee health insurance premiums.

Subscriber Category	Coverage Type	PPO and HMO Standard			PPO and HMO Health Investor		
		Employer	Enrollee	Total	Employer*	Enrollee	Total
Career Service /OPS	Single	591.52	50.00	641.52	591.52	15.00	606.52
	Family	1,264.06	180.00	1,444.06	1,264.06	64.30	1,328.36
	Spouse	1,429.08	30.00	1,459.08	1,298.36	30.00	1,328.36
"Payalls" (SES/SMS)	Single	637.34	8.34	645.68	598.18	8.34	606.52
	Family	1,429.06	30.00	1,459.06	1,298.36	30.00	1,328.36

* Includes employer tax-free Health Savings Account (HSA) contribution - \$41.66 and \$83.33 per month for single and family coverage, respectively

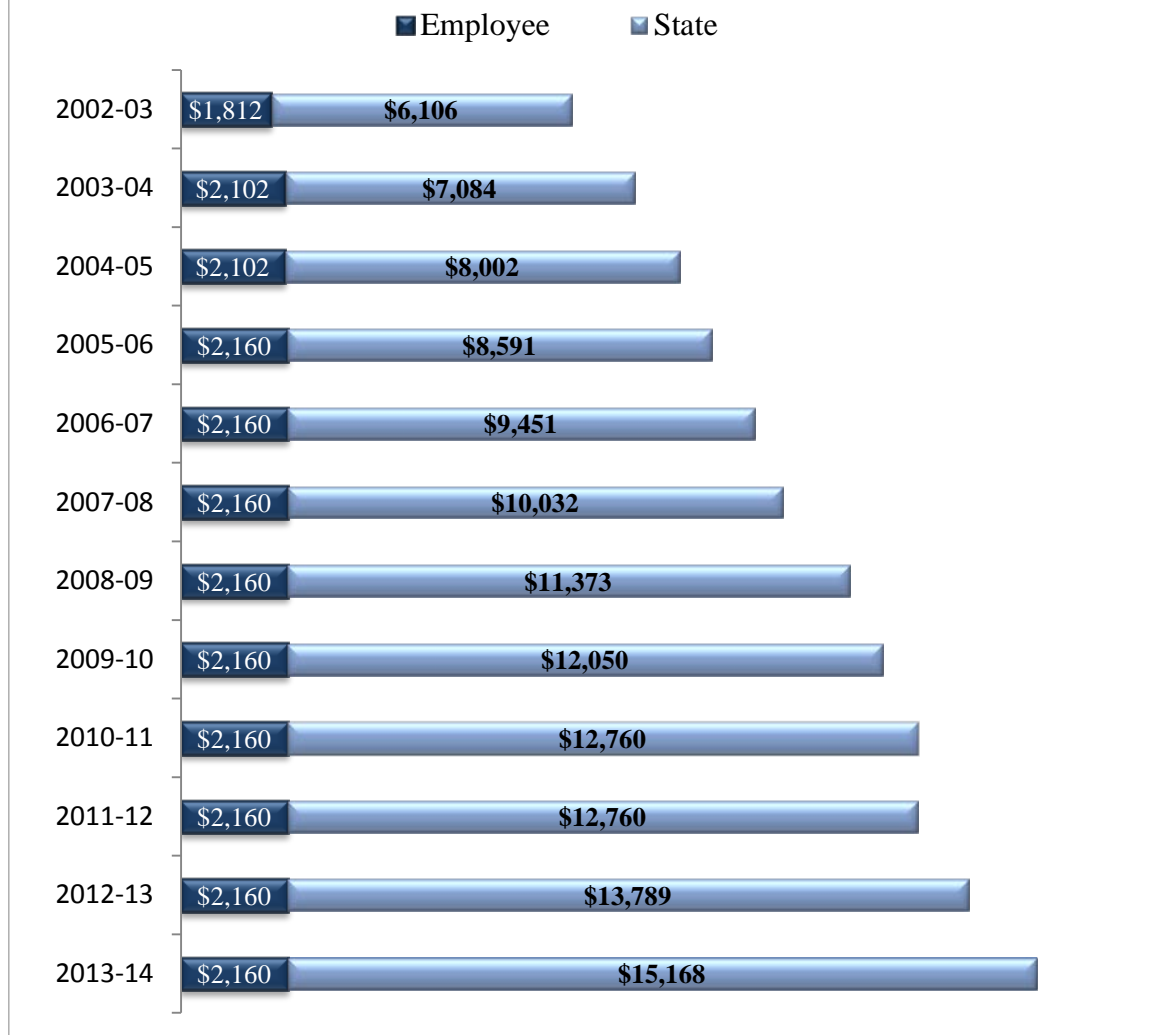
The state program is estimated to spend \$2 billion in FY 2014 in health benefit costs.¹³ The aggregate annual spending growth rate of the program is 8.7%. The state has absorbed almost all of the cost of the increase and employee contributions have remained the same for the last nine years as illustrated by the following chart.¹⁴

¹² State Employees' Group Health Self-Insurance Trust Fund, Report on the Financial Outlook, March 4, 2014.

¹³ Id.

¹⁴ Fiscal information provided by DSGI.

Family Coverage Yearly Premium



Plan Enrollment

The state program has 361,482 covered lives and 173,127 policyholders. Currently, 50.2% of enrollees chose the standard HMO and 48.6% chose the standard PPO. Only 1.2% of enrollees chose either HDHP.¹⁵ During the most recent open enrollment, PPO enrollment decreased by 1.3% and HMO enrollment increased by 3.3%. Five year Open Enrollment trends show that annual enrollment in the PPO plans decreased an average of 0.9% and HMO membership increased 2.5%.¹⁶

Employer Sponsored Insurance Trends

In 2010, DSGI contracted with Mercer Consulting to prepare a Benchmarking Report¹⁷ (report) for the state group insurance program. The report compares Florida's state group insurance program to the programs of other large employers¹⁸, both in the public and in the private sectors. The report found

¹⁵ Overview of the State Group Health Insurance Program, Department of Management Services, presentation to the Health and Human Services Committee on January 16, 2014.

¹⁶ State Employees' Group Health Self-Insurance Trust Fund, Report on the Financial Outlook, March 4, 2014

¹⁷ Mercer Consulting, State of Florida Benchmarking Report (March 24, 2011), available at:

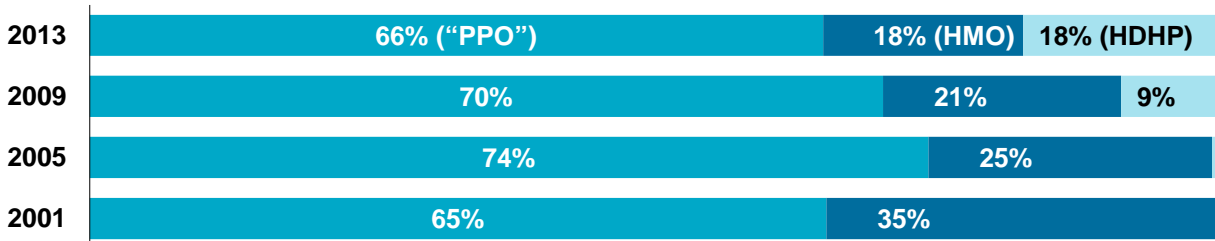
<http://www.dms.myflorida.com/index.php/content/download/81470/468862/version/1/file/2010+Benchmarking+Report+for+State+of+Florida.pdf>

¹⁸ For the purpose of the report, "large employers" had 500 or more employees.

that the State of Florida contributes a higher percentage of the premium to employee health benefits than other states and private employers. At the time, Florida paid 84% of the monthly premium for a family PPO plan, but the average for large national employers was 69%. This results in Florida state employees paying less in monthly premiums than other states' employees and private employees. For example, the monthly premium for a family PPO plan for a Florida state employee is \$180 and in 2011, the average premium for large national employers was \$361.

Today, the monthly premium for a family PPO plan for a Florida state employee is still \$180; however, the state now pays 88% of the premium¹⁹ and the benchmark premium for large national employers ranges from \$270 to \$391 with the company paying 71% to 79% of the premium.²⁰

The national trend among large employer health plans is increasing enrollment in high-deductible health plans (HDHP) and declining enrollment in HMOs as illustrated in the following chart²¹:



The state program's trend is the reverse of the national trend in HMO, PPO, and HDHP because of the HMO's high actuarial value and no difference in premiums between the HMO and PPO. The actuarial value (AV) measures the percentage of expected medical costs that a health plan will cover as is generally considered a measure of the health plan's generosity. The state program's standard HMO as an AV of 93%, the standard PPO has an AV of 86%, and the HDHP has an AV of 80%.²² Accordingly, enrollees in the state program gravitate toward the high value, low cost HMO because they experience no price difference between the plans.

Employee Choice

The FY 11-12 General Appropriations Act directed DMS to develop a report of plan alternatives and options for the state program. DMS contracted with Buck Consultants which released its report²³ on September 29, 2011. The report concludes:

The state's current approach to its health plan is best described as paternalistic, whereby the state serves as the architect/custodian of the plan, providing generous benefits and allowing employees to be passive and perhaps even entitled, with little concern about costs. Historically prevalent among large and governmental employers, this approach is rapidly being replaced by initiatives that focus on increasing and improving consumerism behaviors. In the consumerism approach the employer and employees maintain shared accountability, with the employer providing a supportive environment, partnering with employees and enabling them to make informed decisions, considering costs and outcomes of the health care services they seek and receive.

¹⁹ The state contributes 92% of the premium for the individual PPO plan.

²⁰ Market-Based Framework for Health Plan Program Changes, Mercer Health & Benefits, presentation to the Health and Human Services Committee on January 16, 2014, at slide 18.

²¹ Mercer at slide 6.

²² Mercer at slide 20.

²³ Buck Consultants, Strategic Health Plan Options for the State of Florida (September 29, 2011), available at:

<http://www.dms.myflorida.com/index.php/content/download/81468/468856/version/1/file/Strategic+Health+Plan+Options+for+the+State+of+Florida+9-30-11+-+Final.pdf>

In a presentation before the Health and Human Services Committee on January 16, 2014, Mercer Health & Benefits (Mercer) reported that the state program is behind other large employers in key survey trends²⁴. The state program has plans with lower premiums and higher benefits that industry benchmarks.²⁵ There is virtually no enrollment in HDHPs versus significant growth nationally.²⁶ Florida's plan costs and annual trend increase are higher than national survey data.²⁷ State employees have little real choice among health plan options since there is only a 7% difference in the "richness of the benefits" between the HMO and PPO, and the price is the same.²⁸ Consequently, 99% of enrollees chose the HMO or PPO with little to no incentive to choose the HDHP.²⁹

Effect of the Bill

Premium Adjustments

Current law provides that "the state contribution toward the cost of any plan in the state group insurance program shall be uniform with respect to all state employees . . . participating in the same coverage tier³⁰ in the same plan."³¹ Since there is a 7% difference in the actuarial value between the HMO and the PPO, the state currently pays more from the State Employees' Group Health Self-Insurance Trust Fund (Trust Fund) for the HMO benefits. However, each year the Legislature sets uniform premium amounts in the General Appropriations Act for state paid premiums. The premiums are deposited into the Trust Fund and used to pay the expenses of the state program.

The bill directs DMS to establish employee contribution rates for 2015 plan year that reflect the full actuarial benefit difference between the HMO and the PPO. The rates must be revenue neutral to the Trust Fund and the PPO contribution rate must be less than the employee contribution level for the 2014 plan year. Consequently, next year employees will have a choice between paying more for the higher value HMO and paying less for the lower value PPO. Employees will have a choice between richer benefits and greater take-home pay and the state will still make a uniform contribution on behalf of each employee.

Additional Benefits

The following chart illustrates that many state employees enroll in products offered by the state program other than health insurance.

²⁴ Mercer at slide 5.

²⁵ Mercer at slide 5.

²⁶ Mercer at slide 5.

²⁷ Mercer at slide 6.

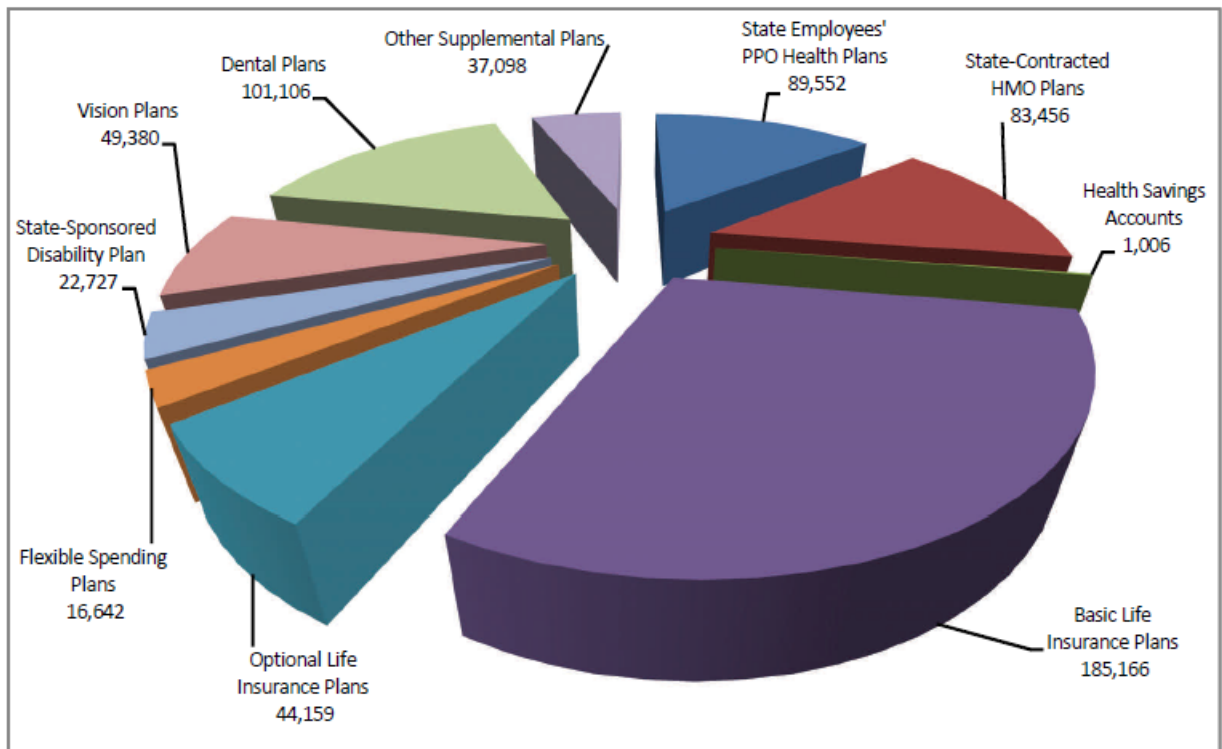
²⁸ Mercer at slide 9.

²⁹ Mercer at slide 9.

³⁰ The coverage tier is either individual or family.

³¹ S. 110.123(3)(f), F.S.

Insurance Plans Average Enrollment FY 2011-12



The bill allows DMS to contract for additional products to be included in the state program. These include:

- Prepaid limited health service organizations as authorized under part I of chapter 636.
- Discount medical plan organizations as authorized under part II of chapter 636.
- Prepaid health clinic service providers licensed under part II of chapter 641.
- Health care providers, including hospitals and other licensed health facilities, health care clinics, licensed health professionals, and other licensed health care providers, who sell service contracts and arrangements for a specified amount and type of health services.
- Provider organizations, including service networks, group practices, professional associations, and other incorporated organizations of providers, who sell service contracts and arrangements for a specified amount and type of health services.
- Corporate entities that provide specific health services in accordance with applicable state law and sell service contracts and arrangements for a specified amount and type of health services.
- Entities that provide health services or treatments through a bidding process.
- Entities that provide health services or treatments through bundling or aggregating the health services or treatments.
- Entities that provide other innovative and cost-effective health service delivery methods.

The bill also directs DMS to contract with at least one entity that provides comprehensive pricing and inclusive services for surgery and other medical procedures. These bundled services will be another option for state employees. The entity will be required to have procedures and evidence-based standards to assure only high quality health care providers. Assistance must be provided to the enrollee in accessing care and in the coordination of the care. The bundled services must provide cost savings to the state program and the enrollee. The selected entity must provide an educational campaign for employees to learn about the offered services.

By January 15 of each year, DMS must report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the participation level and cost-savings to both the enrollee and the state resulting from contract.

Price Transparency Pilot Project

The costs of health care procedures are often unknown and unknowable to consumers and can vary dramatically among providers.³² The following chart shows the extreme price differences across the country of the average cost to Medicare for a joint replacement.

	Hospital Charges	Actual Payment
Maryland	\$21,230	\$20,048
Delaware	\$32,629	\$14,765
Hawaii	\$39,463	\$18,512
Georgia	\$46,856	\$13,303
Pennsylvania	\$51,014	\$13,679
South Carolina	\$57,557	\$13,651
Arkansas	\$63,290	\$21,160
New Jersey	\$66,639	\$15,059
Nevada	\$71,782	\$13,621
California	\$88,238	\$17,187

Note: This includes all joints other than hips.

Source: Centers for Medicare & Medicaid Services, May 8, 2013

California Public Employees' Retirement System (CalPERS), the second largest benefits program in the country started a "reference pricing" initiative in 2011. CalPERS set a threshold of \$30,000 for hospital payments for both for inpatient hip and knee replacements and designated certain hospitals where enrollees could get care at or below that price. If enrollees had surgery at designated hospitals, they paid only their plans' typical deductible and coinsurance up to the out-of-pocket maximum. Patients could go to other in-network hospitals for care but were responsible for both the typical cost sharing and all allowed amounts exceeding the \$30,000 threshold, which were not subject to an out-of-pocket maximum. The initiative resulted in \$2.8 million for CalPERS and \$300,000 in savings for enrollees in 2011 without sacrificing quality.³³

The bill directs DMS to implement beginning in 2015 a 3-year price transparency pilot project. The purpose of the pilot is to reward value-based pricing by publishing the prices of certain diagnostic and surgical procedures and sharing any savings generated by the enrollee's choice of providers. Participation in the project will be voluntary for state employees.

DMS must select between one and three areas of the state for the project. DMS will designate between 20 and 50 diagnostic procedures and elective surgical procedures that are commonly utilized by enrollees. The health plans will provide to DMS the contracted prices by provider for these procedures. DMS shall designate a benchmark price for each procedure.

If an employee participating in the project selects a provider who offers the procedure at a price below the benchmark, the state shall pay to the employee fifty percent of the difference between the benchmark and the price paid. The payment will be taxable income to the employee.

By January 1 of 2016, 2017, and 2018, the department shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the participation level, the amount

³² How to Bring the Price of Health Care Into the Open, The Wall Street Journal, Melinda Beck, February 23, 2014, available at: http://online.wsj.com/news/articles/SB10001424052702303650204579375242842086688?mod=trending_now_5 (last viewed March 17, 2014). Does Knowing Medical Prices Save Money? CalPERS Experiment Says Yes, Kaiser Health New, Ankita Rao, December 6, 2013, available at: <http://capsules.kaiserhealthnews.org/index.php/2013/12/does-knowing-medical-prices-save-money-calpers-experiment-says-yes/> (last viewed March 17, 2014).

³³ The Potential of Reference Pricing to Generate Health Care Savings: Lessons from a California Pioneer, Center for Studying Health System Change, Amanda E. Lechner, Rebecca Gourevitch, Paul B. Ginsburg, Research Brief No. 30, December 2013, available at: <http://www.hschange.org/CONTENT/1397/#ib6> (last viewed March 17, 2014).

paid to enrollees, and cost-savings to both the enrollees and the state resulting from the price transparency pilot project.

Additional Benefit Choices

Beginning in the 2017 plan year, the bill provides that state employees will have health plan choices at four different benefit levels. These levels are:

- Platinum Level (at least 90% AV)
- Gold Level (at least 80% AV)
- Silver Level (at least 70% AV)
- Bronze Level (at least 60% AV)

The state will make a defined contribution for each employee toward the cost of purchasing a health plan. Employees will have the following options:

- Use the entire employer contribution to pay for health insurance and pay any additional premium if the cost of the plan exceeds the employer contribution.
- Use part of the employer contribution to pay for health insurance and have the balance credited to a flexible spending arrangement.
- Use part of the employer contribution to pay for health insurance and have the balance credited to a health savings account.
- Use part of the employer contribution to pay for health insurance and use the balance to purchase additional benefits offered through the state group insurance program.
- Use part of the employer contribution to pay for health insurance and have the balance used to increase the employees pay³⁴.

The state currently pays 92 percent of the employee's premium for an individual plan and 88 percent for a family plan for a 93% AV plan (HMO) or an 86% AV plan (PPO). If the state continued this level contribution, it would give each career service employee a contribution of \$7,098.24 for individual and \$15,168.72 per family.

The following chart illustrates a hypothetical³⁵ example for a Career Service employee with a family plan and a defined contribution benchmarked using the current state contribution, current employee contribution, and the current plan cost:

³⁴ The employee must use part of the employer contribution to purchase health insurance. The employee may not receive pay in lieu of benefits.

³⁵ All examples must be hypothetical since the 2017 benefit structure and plan actuarial values cannot be known at this time.

Family Coverage	Current Plan (86% - 93% AV)	80% AV Coverage	70% AV Coverage	60% AV Coverage
State Contribution	\$15,168	\$15,168	\$15,168	\$15,168
Plan Cost	\$17,328	\$14,344	\$12,852	\$11,361
Employee Contribution	\$2,160	\$0	\$0	\$0
Employee Receives	\$0	\$824	\$2,316	\$3,807

Under this hypothetical, the employee may choose the same value health plan as the employee has today and pay the same amount as today. Unlike today, the employee may also choose a different health plan and use the remainder toward other health benefits or receive additional salary.

Independent Benefits Consultant

The bill also directs DMS to competitively procure an independent benefits consultant (IBC). The IBC must not be or have a financial relationship in any HMO or insurer. Additionally, the IBC must have substantial experience in designing and administering benefit plans for large employers and public employers.

The IBC will assist DMS in developing a plan for the implementation of the new benefit levels in the state program. The plan shall be submitted to the Governor, the President of the Senate and the Speaker of the House of Representatives no later than January 1, 2016, and include recommendations for:

- Employer and employee contribution policies.
- Steps necessary for maintaining or improving total employee compensation levels when the transition is initiated.
- An education strategy to inform employees on the additional choices available in the state group insurance program.

The ongoing duties of the IBC include:

- Providing assessments of trends in benefits and employer sponsored insurance that affect the state group insurance program.
- Conducting comprehensive analysis of the state group insurance program including available benefits, coverage options, and claims experience.
- Identifying and establishing appropriate adjustment procedures necessary to respond to any risk segmentation that may occur when increased choices are offered to employees.
- Assist the department with:
 - The submission of any needed plan revisions for federal review.
 - Ensuring compliance with applicable federal and state regulations.
 - Monitoring the adequacy of funding and reserves for the state self-insured plan.

The IBC will assist DMS in preparing recommendations for any modifications to the state group insurance program no later than January 1 of each year which shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 110.123, F.S., relating to the State Group Insurance Program.
- Section 2:** Creates s. 110.12303, F.S., relating to the State Group Insurance Program; additional benefits; price transparency pilot program; reporting.
- Section 3:** Creates s. 110.12301, F.S., relating to Independent Benefits Consultant.
- Section 4:** 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:
See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will provide additional opportunities for private companies to contract to provide services to the state and to state employees.

D. FISCAL COMMENTS:

The bill has indeterminate fiscal impact as a result of the contract with the independent benefits consultant. DMS will have costs associated with contracting with the independent benefits consultant, but may experience overall savings by contracting with a single consultant for multiple tasks.

The state and employees may experience savings as a result of the price transparency pilot project.

Beginning in FY 16-17, employees will be given a choice of benefit packages. Consequently, the state may experience an overall savings if employees choose lower-cost options. The state may experience savings due to the changes in plan design to the state group insurance program if the changes result in lower overall program costs or a lower rate of cost increase for the program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

- 1. Applicability of Municipality/County Mandates Provision:
Not Applicable. This bill does not appear to affect county or municipal governments.
- 2. Other:
None.

B. RULE-MAKING AUTHORITY:

The Department of Management Services has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

PCB HHSC 14-01

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to the State Employee Group Health
3 Plan; amending s. 110.123, F.S.; providing application
4 of definitions; providing definitions; authorizing
5 additional benefits in the program; providing
6 elections for enrollees for the use of the state
7 contribution toward the cost of benefits in the
8 program; authorizing the use of state funds to
9 purchase supplemental employee benefits under
10 specified circumstances; providing that the program
11 shall offer health plans at specified benefit levels;
12 providing reporting requirements for the Department of
13 Management Services; creating s. 110.12303, F.S.;
14 authorizing additional benefits to be included in the
15 program; providing the department shall contract with
16 at least one entity that provides comprehensive
17 pricing and inclusive services for surgery and other
18 medical procedures; providing contract requirements;
19 providing reporting requirements; creating a 3-year
20 price transparency pilot project in specified regions;
21 providing project requirements; providing reporting
22 requirements; creating s. 110.12304, F.S.; directing
23 the department to contract with an independent
24 benefits consultant; providing requirements for the
25 independent benefits consultant; providing duties of
26 the independent benefits consultant; providing

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27 reporting requirements; providing an effective date.

28

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

30

31 Section 1. Subsection (2), paragraphs (b), (f), (h), and
 32 (j) of subsection (3), and paragraph (a) of subsection (12) of
 33 section 110.123, Florida Statutes, are amended to read:

34 110.123 State group insurance program.—

35 (2) DEFINITIONS.—As used in sections 110.123-110.1239
 36 ~~this section~~, the term:

37 (a) "Department" means the Department of Management
 38 Services.

39 (b) "Enrollee" means all state officers and employees,
 40 retired state officers and employees, surviving spouses of
 41 deceased state officers and employees, and terminated employees
 42 or individuals with continuation coverage who are enrolled in an
 43 insurance plan offered by the state group insurance program.
 44 "Enrollee" includes all state university officers and employees,
 45 retired state university officers and employees, surviving
 46 spouses of deceased state university officers and employees, and
 47 terminated state university employees or individuals with
 48 continuation coverage who are enrolled in an insurance plan
 49 offered by the state group insurance program.

50 (c) "Full-time state employees" means employees of all
 51 branches or agencies of state government holding salaried
 52 positions who are paid by state warrant or from agency funds and

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53 who work or are expected to work an average of at least 30 or
 54 more hours per week; employees paid from regular salary
 55 appropriations for 8 months' employment, including university
 56 personnel on academic contracts; and employees paid from other-
 57 personal-services (OPS) funds as described in subparagraphs 1.
 58 and 2. The term includes all full-time employees of the state
 59 universities. The term does not include seasonal workers who are
 60 paid from OPS funds.

61 1. For persons hired before April 1, 2013, the term
 62 includes any person paid from OPS funds who:

63 a. Has worked an average of at least 30 hours or more per
 64 week during the initial measurement period from April 1, 2013,
 65 through September 30, 2013; or

66 b. Has worked an average of at least 30 hours or more per
 67 week during a subsequent measurement period.

68 2. For persons hired after April 1, 2013, the term
 69 includes any person paid from OPS funds who:

70 a. Is reasonably expected to work an average of at least
 71 30 hours or more per week; or

72 b. Has worked an average of at least 30 hours or more per
 73 week during the person's measurement period.

74 (d) "Health maintenance organization" or "HMO" means an
 75 entity certified under part I of chapter 641.

76 (e) "Health plan member" means any person participating in
 77 a state group health insurance plan, a TRICARE supplemental
 78 insurance plan, or a health maintenance organization plan under

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79 the state group insurance program, including enrollees and
80 covered dependents thereof.

81 (f) "Part-time state employee" means an employee of any
82 branch or agency of state government paid by state warrant from
83 salary appropriations or from agency funds, and who is employed
84 for less than an average of 30 hours per week or, if on academic
85 contract or seasonal or other type of employment which is less
86 than year-round, is employed for less than 8 months during any
87 12-month period, but does not include a person paid from other-
88 personal-services (OPS) funds. The term includes all part-time
89 employees of the state universities.

90 (g) "Plan year" means a calendar year.

91 (h) ~~(g)~~ "Retired state officer or employee" or "retiree"
92 means any state or state university officer or employee who
93 retires under a state retirement system or a state optional
94 annuity or retirement program or is placed on disability
95 retirement, and who was insured under the state group insurance
96 program at the time of retirement, and who begins receiving
97 retirement benefits immediately after retirement from state or
98 state university office or employment. The term also includes
99 any state officer or state employee who retires under the
100 Florida Retirement System Investment Plan established under part
101 II of chapter 121 if he or she:

- 102 1. Meets the age and service requirements to qualify for
103 normal retirement as set forth in s. 121.021(29); or
- 104 2. Has attained the age specified by s. 72(t)(2)(A)(i) of

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105 | the Internal Revenue Code and has 6 years of creditable service.

106 | (i) ~~(h)~~ "State agency" or "agency" means any branch,
 107 | department, or agency of state government. "State agency" or
 108 | "agency" includes any state university for purposes of this
 109 | section only.

110 | (j) ~~(i)~~ "Seasonal workers" has the same meaning as
 111 | provided under 29 C.F.R. s. 500.20(s)(1).

112 | (k) ~~(j)~~ "State group health insurance plan or plans" or
 113 | "state plan or plans" mean the state self-insured health
 114 | insurance plan or plans offered to state officers and employees,
 115 | retired state officers and employees, and surviving spouses of
 116 | deceased state officers and employees pursuant to this section.

117 | (l) ~~(k)~~ "State-contracted HMO" means any health
 118 | maintenance organization under contract with the department to
 119 | participate in the state group insurance program.

120 | (m) ~~(l)~~ "State group insurance program" or "programs"
 121 | means the package of insurance plans offered to state officers
 122 | and employees, retired state officers and employees, and
 123 | surviving spouses of deceased state officers and employees
 124 | pursuant to this section, including the state group health
 125 | insurance plan or plans, health maintenance organization plans,
 126 | TRICARE supplemental insurance plans, and other plans required
 127 | or authorized by law.

128 | (n) ~~(m)~~ "State officer" means any constitutional state
 129 | officer, any elected state officer paid by state warrant, or any
 130 | appointed state officer who is commissioned by the Governor and

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131 | who is paid by state warrant.

132 | (o) ~~(n)~~ "Surviving spouse" means the widow or widower of a
 133 | deceased state officer, full-time state employee, part-time
 134 | state employee, or retiree if such widow or widower was covered
 135 | as a dependent under the state group health insurance plan, ~~a~~
 136 | TRICARE supplemental insurance plan, or a health maintenance
 137 | organization plan established pursuant to this section at the
 138 | time of the death of the deceased officer, employee, or retiree.
 139 | "Surviving spouse" also means any widow or widower who is
 140 | receiving or eligible to receive a monthly state warrant from a
 141 | state retirement system as the beneficiary of a state officer,
 142 | full-time state employee, or retiree who died prior to July 1,
 143 | 1979. For the purposes of this section, any such widow or
 144 | widower shall cease to be a surviving spouse upon his or her
 145 | remarriage.

146 | (p) ~~(e)~~ "TRICARE supplemental insurance plan" means the
 147 | Department of Defense Health Insurance Program for eligible
 148 | members of the uniformed services authorized by 10 U.S.C. s.
 149 | 1097.

150 | (3) STATE GROUP INSURANCE PROGRAM.—

151 | (b) It is the intent of the Legislature to offer a
 152 | comprehensive package of health insurance and retirement
 153 | benefits and a personnel system for state employees which are
 154 | provided in a cost-efficient and prudent manner, and to allow
 155 | state employees the option to choose benefit plans which best
 156 | suit their individual needs. ~~Therefore,~~ The state group

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157 | insurance program ~~is established which~~ may include the state
 158 | group health insurance plan or plans, health maintenance
 159 | organization plans, group life insurance plans, TRICARE
 160 | supplemental insurance plans, group accidental death and
 161 | dismemberment plans, ~~and group disability insurance plans,~~
 162 | ~~Furthermore, the department is additionally authorized to~~
 163 | ~~establish and provide as part of the state group insurance~~
 164 | ~~program any other group insurance plans or coverage choices, and~~
 165 | ~~other benefits authorized by law. that are consistent with the~~
 166 | ~~provisions of this section.~~

167 | (f) Except as provided for in subparagraph (h)2., the
 168 | state contribution toward the cost of any plan in the state
 169 | group insurance program shall be uniform with respect to all
 170 | state employees in a state collective bargaining unit
 171 | participating in the same coverage tier in the same plan. This
 172 | section does not prohibit the development of separate benefit
 173 | plans for officers and employees exempt from the career service
 174 | or the development of separate benefit plans for each collective
 175 | bargaining unit. For the 2017 plan year and thereafter, if the
 176 | state's contribution is more than the premium cost of the health
 177 | plan selected by the employee, subject to any federal
 178 | limitations, the employee may elect to have the balance:

- 179 | 1. Credited to the employee's flexible spending account;
- 180 | 2. Credited to the employee's health savings account;
- 181 | 3. Used to purchase additional benefits offered through
- 182 | the state group insurance program.

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183 4. Used to increase the employee's salary by the
 184 difference between the premium cost for the employee's selected
 185 health plan and the contribution made by the state.

186 (h)1. A person eligible to participate in the state group
 187 insurance program may be authorized by rules adopted by the
 188 department, in lieu of participating in the state group health
 189 insurance plan, to exercise an option to elect membership in a
 190 health maintenance organization plan which is under contract
 191 with the state in accordance with criteria established by this
 192 section and by said rules. The offer of optional membership in a
 193 health maintenance organization plan permitted by this paragraph
 194 may be limited or conditioned by rule as may be necessary to
 195 meet the requirements of state and federal laws.

196 2. The department shall contract with health maintenance
 197 organizations seeking to participate in the state group
 198 insurance program through a request for proposal or other
 199 procurement process, as developed by the Department of
 200 Management Services and determined to be appropriate.

201 a. The department shall establish a schedule of minimum
 202 benefits for health maintenance organization coverage, and that
 203 schedule shall include: physician services; inpatient and
 204 outpatient hospital services; emergency medical services,
 205 including out-of-area emergency coverage; diagnostic laboratory
 206 and diagnostic and therapeutic radiologic services; mental
 207 health, alcohol, and chemical dependency treatment services
 208 meeting the minimum requirements of state and federal law;

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209 skilled nursing facilities and services; prescription drugs;
 210 age-based and gender-based wellness benefits; and other benefits
 211 as may be required by the department. Additional services may be
 212 provided subject to the contract between the department and the
 213 HMO. As used in this paragraph, the term "age-based and gender-
 214 based wellness benefits" includes aerobic exercise, education in
 215 alcohol and substance abuse prevention, blood cholesterol
 216 screening, health risk appraisals, blood pressure screening and
 217 education, nutrition education, program planning, safety belt
 218 education, smoking cessation, stress management, weight
 219 management, and women's health education.

220 b. The department may establish uniform deductibles,
 221 copayments, coverage tiers, or coinsurance schedules for all
 222 participating HMO plans.

223 c. The department may require detailed information from
 224 each health maintenance organization participating in the
 225 procurement process, including information pertaining to
 226 organizational status, experience in providing prepaid health
 227 benefits, accessibility of services, financial stability of the
 228 plan, quality of management services, accreditation status,
 229 quality of medical services, network access and adequacy,
 230 performance measurement, ability to meet the department's
 231 reporting requirements, and the actuarial basis of the proposed
 232 rates and other data determined by the director to be necessary
 233 for the evaluation and selection of health maintenance
 234 organization plans and negotiation of appropriate rates for

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235 | these plans. Upon receipt of proposals by health maintenance
 236 | organization plans and the evaluation of those proposals, the
 237 | department may enter into negotiations with all of the plans or
 238 | a subset of the plans, as the department determines appropriate.
 239 | Nothing shall preclude the department from negotiating regional
 240 | or statewide contracts with health maintenance organization
 241 | plans when this is cost-effective and when the department
 242 | determines that the plan offers high value to enrollees.

243 | d. The department may limit the number of HMOs that it
 244 | contracts with in each service area based on the nature of the
 245 | bids the department receives, the number of state employees in
 246 | the service area, or any unique geographical characteristics of
 247 | the service area. The department shall establish by rule service
 248 | areas throughout the state.

249 | e. All persons participating in the state group insurance
 250 | program may be required to contribute towards a total state
 251 | group health premium that may vary depending upon the plan,
 252 | coverage level, and coverage tier selected by the enrollee and
 253 | the level of state contribution authorized by the Legislature.

254 | 3. The department is authorized to negotiate and to
 255 | contract with specialty psychiatric hospitals for mental health
 256 | benefits, on a regional basis, for alcohol, drug abuse, and
 257 | mental and nervous disorders. The department may establish,
 258 | subject to the approval of the Legislature pursuant to
 259 | subsection (5), any such regional plan upon completion of an
 260 | actuarial study to determine any impact on plan benefits and

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261 premiums.

262 4. In addition to contracting pursuant to subparagraph 2.,
 263 the department may enter into contract with any HMO to
 264 participate in the state group insurance program which:

265 a. Serves greater than 5,000 recipients on a prepaid basis
 266 under the Medicaid program;

267 b. Does not currently meet the 25-percent non-
 268 Medicare/non-Medicaid enrollment composition requirement
 269 established by the Department of Health excluding participants
 270 enrolled in the state group insurance program;

271 c. Meets the minimum benefit package and copayments and
 272 deductibles contained in sub-subparagraphs 2.a. and b.;

273 d. Is willing to participate in the state group insurance
 274 program at a cost of premiums that is not greater than 95
 275 percent of the cost of HMO premiums accepted by the department
 276 in each service area; and

277 e. Meets the minimum surplus requirements of s. 641.225.

278
 279 The department is authorized to contract with HMOs that meet the
 280 requirements of sub-subparagraphs a.-d. prior to the open
 281 enrollment period for state employees. The department is not
 282 required to renew the contract with the HMOs as set forth in
 283 this paragraph more than twice. Thereafter, the HMOs shall be
 284 eligible to participate in the state group insurance program
 285 only through the request for proposal or invitation to negotiate
 286 process described in subparagraph 2.

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287 | 5. All enrollees in a state group health insurance plan, a
 288 | TRICARE supplemental insurance plan, or any health maintenance
 289 | organization plan have the option of changing to any other
 290 | health plan that is offered by the state within any open
 291 | enrollment period designated by the department. Open enrollment
 292 | shall be held at least once each calendar year.

293 | 6. When a contract between a treating provider and the
 294 | state-contracted health maintenance organization is terminated
 295 | for any reason other than for cause, each party shall allow any
 296 | enrollee for whom treatment was active to continue coverage and
 297 | care when medically necessary, through completion of treatment
 298 | of a condition for which the enrollee was receiving care at the
 299 | time of the termination, until the enrollee selects another
 300 | treating provider, or until the next open enrollment period
 301 | offered, whichever is longer, but no longer than 6 months after
 302 | termination of the contract. Each party to the terminated
 303 | contract shall allow an enrollee who has initiated a course of
 304 | prenatal care, regardless of the trimester in which care was
 305 | initiated, to continue care and coverage until completion of
 306 | postpartum care. This does not prevent a provider from refusing
 307 | to continue to provide care to an enrollee who is abusive,
 308 | noncompliant, or in arrears in payments for services provided.
 309 | For care continued under this subparagraph, the program and the
 310 | provider shall continue to be bound by the terms of the
 311 | terminated contract. Changes made within 30 days before
 312 | termination of a contract are effective only if agreed to by

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313 both parties.

314 7. Any HMO participating in the state group insurance
 315 program shall submit health care utilization and cost data to
 316 the department, in such form and in such manner as the
 317 department shall require, as a condition of participating in the
 318 program. The department shall enter into negotiations with its
 319 contracting HMOs to determine the nature and scope of the data
 320 submission and the final requirements, format, penalties
 321 associated with noncompliance, and timetables for submission.
 322 These determinations shall be adopted by rule.

323 8. The department may establish and direct, with respect
 324 to collective bargaining issues, a comprehensive package of
 325 insurance benefits that may include supplemental health and life
 326 coverage, dental care, long-term care, vision care, and other
 327 benefits it determines necessary to enable state employees to
 328 select from among benefit options that best suit their
 329 individual and family needs. Beginning with the 2015 plan year
 330 the package of benefits may also include products and services
 331 described in s. 110.12303.

332 a. Based upon a desired benefit package, the department
 333 shall issue a request for proposal or invitation to negotiate
 334 for ~~health insurance~~ providers interested in participating in
 335 the state group insurance program, and the department shall
 336 issue a request for proposal or invitation to negotiate for
 337 ~~insurance~~ providers interested in participating in the non-
 338 health-related components of the state group insurance program.

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339 Upon receipt of all proposals, the department may enter into
 340 contract negotiations with insurance providers submitting bids
 341 or negotiate a specially designed benefit package. Insurance
 342 providers offering or providing supplemental coverage as of May
 343 30, 1991, which qualify for pretax benefit treatment pursuant to
 344 s. 125 of the Internal Revenue Code of 1986, with 5,500 or more
 345 state employees currently enrolled may be included by the
 346 department in the supplemental insurance benefit plan
 347 established by the department without participating in a request
 348 for proposal, submitting bids, negotiating contracts, or
 349 negotiating a specially designed benefit package. These
 350 contracts shall provide state employees with the most cost-
 351 effective and comprehensive coverage available; however, except
 352 as provided in paragraph (j)4., no state or agency funds shall
 353 be contributed toward the cost of any part of the premium of
 354 such supplemental benefit plans. With respect to dental
 355 coverage, the division shall include in any solicitation or
 356 contract for any state group dental program made after July 1,
 357 2001, a comprehensive indemnity dental plan option which offers
 358 enrollees a completely unrestricted choice of dentists. If a
 359 dental plan is endorsed, or in some manner recognized as the
 360 preferred product, such plan shall include a comprehensive
 361 indemnity dental plan option which provides enrollees with a
 362 completely unrestricted choice of dentists.

363 b. Pursuant to the applicable provisions of s. 110.161,
 364 and s. 125 of the Internal Revenue Code of 1986, the department

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365 shall enroll in the pretax benefit program those state employees
 366 who voluntarily elect coverage in any of the supplemental
 367 ~~insurance~~ benefit plans as provided by sub-subparagraph a.

368 c. Nothing herein contained shall be construed to prohibit
 369 insurance providers from continuing to provide or offer
 370 supplemental benefit coverage to state employees as provided
 371 under existing agency plans.

372 (j) For the 2017 plan year and thereafter, health plans
 373 shall be offered in the following benefit levels:

374 1. Platinum Level, which shall have an actuarial value of
 375 at least 90 percent.

376 2. Gold Level, which shall have an actuarial value of at
 377 least 80 percent.

378 3. Silver Level, which shall have an actuarial value of at
 379 least 70 percent.

380 4. Bronze Level, which shall have an actuarial value of at
 381 least 60 percent. ~~Notwithstanding paragraph (f) requiring~~
 382 ~~uniform contributions, and for the 2011-2012 fiscal year only,~~
 383 ~~the state contribution toward the cost of any plan in the state~~
 384 ~~group insurance plan is the difference between the overall~~
 385 ~~premium and the employee contribution. This subsection expires~~
 386 ~~June 30, 2012.~~

387 (k) In consultation with the independent benefits
 388 consultant described in s. 110.12304, the department shall
 389 develop a plan for the implementation of the benefit levels
 390 described in paragraph (j). The plan shall be submitted to the

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391 Governor, the President of the Senate and the Speaker of the
 392 House of Representatives no later than January 1, 2016, and
 393 include recommendations for:

- 394 1. Employer and employee contribution policies.
- 395 2. Steps necessary for maintaining or improving total
 396 employee compensation levels when the transition is initiated.
- 397 3. An education strategy to inform employees on the
 398 additional choices available in the state group insurance
 399 program.

400

401 This paragraph shall expire July 1, 2016.

402 Section 2. Section 110.12303, Florida Statutes, is created
 403 to read:

404 110.12303 State Group Insurance Program; additional
 405 benefits; price transparency pilot program; reporting.-

406 (1) For the 2015 plan year and thereafter, in addition to
 407 the comprehensive package of health insurance and other benefits
 408 required or authorized to be included in the state group
 409 insurance program, the package of benefits may also include
 410 products and services offered by:

411 (a) Prepaid limited health service organizations as
 412 authorized under part I of chapter 636.

413 (b) Discount medical plan organizations as authorized
 414 under part II of chapter 636.

415 (c) Prepaid health clinic service providers licensed under
 416 part II of chapter 641.

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417 (d) Health care providers, including hospitals and other
 418 licensed health facilities, health care clinics, licensed health
 419 professionals, and other licensed health care providers, who
 420 sell service contracts and arrangements for a specified amount
 421 and type of health services.

422 (e) Provider organizations, including service networks,
 423 group practices, professional associations, and other
 424 incorporated organizations of providers, who sell service
 425 contracts and arrangements for a specified amount and type of
 426 health services.

427 (f) Corporate entities that provide specific health
 428 services in accordance with applicable state law and sell
 429 service contracts and arrangements for a specified amount and
 430 type of health services.

431 (g) Entities that provide health services or treatments
 432 through a bidding process.

433 (h) Entities that provide health services or treatments
 434 through bundling or aggregating the health services or
 435 treatments.

436 (i) Entities that provide other innovative and cost-
 437 effective health service delivery methods.

438 (2) Beginning with the 2015 plan year, the department
 439 shall contract with at least one entity that provides
 440 comprehensive pricing and inclusive services for surgery and
 441 other medical procedures which may be accessed at the option of
 442 the enrollee. The contract shall require the entity to:

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443 (a) Have procedures and evidence-based standards to assure
 444 only high quality health care providers.

445 (b) Provide assistance to the enrollee in accessing care
 446 and in the coordination of the care.

447 (c) Provide cost savings to the state group insurance
 448 program that is shared with both the state and the enrollee.

449 (d) Provide an educational campaign for employees to learn
 450 about the services offered by the entity.

451 (3) By January 15 of each year, the department shall
 452 report to the Governor, the President of the Senate, and the
 453 Speaker of the House of Representatives on the participation
 454 level and cost-savings to both the enrollee and the state
 455 resulting from contract described in subsection (2).

456 (4) Beginning in the 2015 plan year, the department shall
 457 implement a 3-year price transparency pilot project in at least
 458 one but no more than three areas of the state that have a
 459 substantial percentage of the enrollees in the state group
 460 insurance program. The purpose of the pilot is to reward value-
 461 based pricing by publishing the prices of certain diagnostic and
 462 surgical procedures and sharing any savings generated by the
 463 enrollee's choice of providers.

464 (a) Participation in the project shall be voluntary for
 465 enrollees.

466 (b) The department shall designate between 20 and 50
 467 diagnostic procedures and elective surgical procedures that are
 468 commonly utilized by enrollees.

469 (c) The plan administrator shall provide to the department
 470 the contracted price by provider for each designated procedure.
 471 The department shall post the prices on its webpage and shall
 472 designate one of the prices per procedure as the benchmark
 473 price, using the mean, average, or other method of comparing the
 474 prices.

475 (d) If an enrollee participating in the project selects a
 476 provider that preforms the designated procedure at a price below
 477 the benchmark price for that procedure, the enrollee shall
 478 receive from the state fifty percent of the difference between
 479 the price of the procedure by the selected provider and the
 480 benchmark price.

481 (4) By January 1 of 2016, 2017, and 2018, the department
 482 shall report to the Governor, the President of the Senate, and
 483 the Speaker of the House of Representatives on the participation
 484 level, the amount paid to enrollees, and cost-savings to both
 485 the enrollees and the state resulting from the price
 486 transparency pilot project.

487 Section 3. Section 110.12304, Florida Statutes, is created
 488 to read:

489 110.12304 Independent Benefits Consultant.-

490 (1) The department shall competitively procure an
 491 independent benefits consultant.

492 (2) The independent benefits consultant may not:

493 (a) Be owned or controlled by an HMO or insurer.

494 (b) Have an ownership interest in an HMO or insurer.

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495 (c) Have a direct or indirect financial interest in an HMO
 496 or insurer.

497 (3) The independent benefits consultant must have
 498 substantial experience in consultation and design of employee
 499 benefit programs for large employers and public employers,
 500 including experience with plans that qualify as cafeteria plans
 501 pursuant to s. 125 of the Internal Revenue Code.

502 (4) The independent benefits consultant shall:

503 (a) Provide an ongoing assessment of trends in benefits
 504 and employer-sponsored insurance that affect the state group
 505 insurance program.

506 (b) Conduct comprehensive analysis of the state group
 507 insurance program, including available benefits, coverage
 508 options, and claims experience.

509 (c) Identify and establish appropriate adjustment
 510 procedures necessary to respond to any risk segmentation that
 511 may occur when increased choices are offered to employees.

512 (d) Assist the department with the submission of any
 513 needed plan revisions for federal review.

514 (e) Assist the department in ensuring compliance with
 515 applicable federal and state regulations.

516 (f) Assist the department in monitoring the adequacy of
 517 funding and reserves for the state self-insured plan.

518 (g) Assist the department in preparing recommendations for
 519 any modifications to the state group insurance program which
 520 shall be submitted to the Governor, the President of the Senate,

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521 and the Speaker of the House of Representatives no later than
 522 January 1 of each year.

523 Section 4. For the 2015 plan year, the Department of
 524 Management Services shall adjust the standard Health Maintenance
 525 Organization plan employee contribution rates and the standard
 526 Preferred Provider Option plan employee contribution rates to
 527 reflect the full actuarial benefit difference between the plans.
 528 The adjustment must be revenue neutral to the State Employees'
 529 Group Health Self-Insurance Trust Fund and must result in a
 530 decrease in employee contribution level from the 2014 plan year
 531 for the standard Preferred Provider Option plan.

532 Section 5. This act shall take effect July 1, 2014.

533

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 463 Background Screening
SPONSOR(S): Judiciary Committee; Reed and others
TIED BILLS: IDEN./SIM. BILLS: CS/SB 674

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	11 Y, 0 N	Guzzo	Shaw
2) Judiciary Committee	17 Y, 0 N, As CS	Ham-Warren	Havlicak
3) Health & Human Services Committee		Guzzo <i>TG</i>	Calamas <i>CC</i>

SUMMARY ANALYSIS

In 2012, the Legislature created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single program of screening individuals for criminal background checks prior to employment in certain health related service positions. The Clearinghouse is created under the Agency for Health Care Administration (AHCA), and was implemented by AHCA on January 1, 2013. The bill makes several changes to the provisions of the Clearinghouse. Specifically, the bill:

- Clarifies that employers must register with and initiate all criminal history checks through the clearinghouse before referring a potential employee for electronic fingerprint submission;
- Requires vendors who submit fingerprints on behalf of employers to include a photograph of the person taken at the time the fingerprints are submitted;
- Allows the Department of Highway Safety and Motor Vehicles to share driver's license photographs through interagency agreements with the Department of Health for the purpose of accessing digital images for the reproduction of licenses and with AHCA so that authorized agencies may verify photographs in the Clearinghouse; and
- Specifies demographic information that must be submitted with a request for a criminal background check as required for a federal check.

The bill also:

- Provides that the three-year waiting period to apply for an exemption from disqualification for a criminal offense does not apply to monetary sanctions for a felony disqualifying offense, so long as all sanctions are paid or completed prior to an exemption being granted;
- Updates the disqualifying offenses in s. 408.809, F.S., and ch. 435, F.S., to include criminal offenses involving theft that are similar to existing disqualifying offenses and to include the attempt, solicitation, or conspiracy to commit a disqualifying offense; and
- Revises applicability of background screening requirements for certain service providers who must register with DVR.

The bill does not appear to have a 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

Florida has one of the largest vulnerable populations in the country with 17.3 percent of the state's population over the age of 65.¹ In addition to the elderly, the state's vulnerable children and disabled adults require special care because they are at an increased risk of abuse.

Criminal Background Screening

In 1995, the Legislature created standard procedures for criminal history background screening of prospective employees, owners, operators, contractors, and volunteers. Chapter 435, F.S., outlines the screening requirements. In 2010, the Legislature substantially rewrote the requirements and procedures for background screening.² Major changes made by the 2010 legislation include:

- No person who is required to be screened may begin work until the screening has been completed.
- All Level 1³ screenings were increased to Level 2⁴ screenings.
- By July 1, 2012, all fingerprints submitted to the Florida Department of Law Enforcement (FDLE) must be submitted electronically.
- Certain personnel that were not being screened were required to begin Level 2 screening.
- The addition of serious crimes that disqualify an individual from employment working with vulnerable populations.
- Authorization for agencies to request the retention of fingerprints by FDLE.
- That an exemption for a disqualifying felony may not be granted until at least three years after the completion of all sentencing sanctions for that felony.
- That all exemptions from disqualification may be granted only by the agency head.

Florida licensure laws require providers licensed by the Agency for Health Care Administration (AHCA) to conduct Level 2 criminal background screening for:⁵

- The licensee;
- Administrators and financial officers;
- Staff of health care providers who offer residential and home care services that provide personal care services or have access to client property, funds or living areas; and
- Any person who is a controlling interest if there is reason to suspect they have committed a disqualifying criminal offense.

Current background screening standards in ch. 435, F.S., and s. 408.809, F.S., include various disqualifying offenses pertaining, but not limited to, domestic violence, patient brokering, criminal use of

¹ The Older Population: 2010 Census Briefs, U.S. Census Bureau, Issued November 2011, p. 9, available at: <http://www.census.gov/prod/cen2010/briefs/c2010br-09.pdf> (Last visited March 18, 2014).

² Chapter 2010-114, L.O.F.

³ Section 435.03, F.S. Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. A person undergoing a Level 1 screening must not have been found guilty of any of the listed offenses.

⁴ Section 435.04, F.S. A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the listed offenses.

⁵ Section 408.809, F.S.

personal identification information, fraudulent use of credit cards, forgery, and possession/sale of illegal drugs.

There are some criminal offenses, not presently listed as disqualifying offenses, that are substantially similar to current disqualifying offenses. For example, s. 408.809(4)(k), F.S., states that fraudulent use of credit cards, if the offense was a felony, as described in s. 817.61, F.S., is a disqualifying offense. Under current background screening standards, obtaining goods by use of a false or expired credit, if the offense was a felony, as described in s. 817.841, F.S., is not considered a disqualifying offense.

Designated agencies have the authority to grant exemptions from disqualification.⁶ The exemptions enable people who have been convicted of a disqualifying criminal offense to present information as to why they should not be excluded from working with vulnerable individuals. The information includes specifics of the offense, how long ago the offense occurred, work history, and rehabilitation. Current law states that an applicant who applies for an exemption for a felony offense must have had at least three years elapse since completion of any sentence or lawful release from confinement, supervision, or sanction for the disqualifying felony.⁷ The three-year waiting period includes even the smallest sanction, such as an unpaid balance of a fine. The requirement is similar for disqualifying misdemeanors, except that there is no specific time frame mandated post completion of being lawfully released from confinement, supervision, or sanction. Some applicants who are otherwise qualified for an exemption are unaware of outstanding monetary sanctions related to their disqualifying offense until being notified by the agency. In some cases, the applicant's criminal case may have been closed for over a decade but the applicant may still have an outstanding monetary sanction related to the disqualifying offense. Once the outstanding monetary sanction has been paid, the applicant would not be eligible to be granted an exemption from disqualification for a period of three years after completion of the sanction.

The term "sanction" is not currently defined in chapter 435, F.S. Numerous state agencies are bound by chapter 435, F.S., and the interpretation of the term "sanction" varies widely among the agencies.⁸

Background Screening Clearinghouse

In 2012, the Legislature passed CS/CS/CS/HB 943, which created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single "program" of screening individuals and allow for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies. Designated agencies include AHCA, the Department of Health (DOH), the Department of Children and Families, the Department of Elder Affairs, the Agency for Persons with Disabilities, and Vocational Rehabilitation within the Department of Education. Once a person's screening record is in the Clearinghouse, that person will avoid the need for any future state screens and related fees. Final implementation of the Clearinghouse by the designated state agencies was required by October 1, 2013. The Clearinghouse was initially implemented by AHCA on January 1, 2013.

The Department of Highway Safety and Motor Vehicles (DHSMV) has the authority to maintain a record of driver license photographs together with other data required for identification and retrieval.⁹ The DHSMV also has the authority to share those photographs, through interagency agreements, with specific state agencies.¹⁰

⁶ Section 435.07, F.S.

⁷ *Id.*

⁸ HB 1021 (2013) Bill Analysis and Economic Impact Statement, Agency for Health Care Administration, at page 4, March 13, 2013 (on file with the Health Innovation Subcommittee).

⁹ Section 322.142(4), F.S.

¹⁰ Section 322.142(4), F.S., provides that DHSMV may provide reproductions of the file or digital record to the Department of Business and Professional Regulation, the Department of State, the Department of Revenue, the Department of Children and Families, the Department of Financial Services, or to district medical examiners.

Collecting photographs at the time of screening is an important part of implementing the Clearinghouse. The requirement to submit a photograph was added to law during the 2012 Legislative Session. However, instead of being in the Clearinghouse statute (s. 435.12, F.S.), the requirement currently exists in the general Level 2 screening standards of s. 435.04(1)(e), F.S.

Employers of individuals subject to screening by a specified agency are required to register with the Clearinghouse and maintain the employment status of all employees with the Clearinghouse for screenings conducted after the date the state agency begins participation in the Clearinghouse. Initial employment status and any change in status must be reported by the employer within 10 business days.¹¹ Currently, it is not a requirement that screenings be initiated through the Clearinghouse.

Effect of Proposed Changes

The bill amends s. 322.142, F.S., to authorize DHSMV, pursuant to interagency agreements, to make available a record of driver's license photographs to DOH for the purpose of accessing digital images for reproduction of licenses issued by DOH and to AHCA so that authorized agencies may verify photographs in the Clearinghouse.

The bill amends s. 408.806, F.S., to provide that an individual taxpayer identification number may be submitted to AHCA for the purpose of background screening if the applicant cannot legally obtain a social security number. In addition, the bill provides that an attestation, rather than an affidavit, may be submitted by the applicant stating compliance with the provisions of that section and ch. 435, F.S.

The bill amends ss. 408.809 and 435.04, F.S., to add disqualifying offenses. The criminal offenses added include obtaining goods by use of false or expired credit cards or other credit device, if the offense was a felony (s. 817.481, F.S.), fraudulently obtaining goods or services from a health care provider (s. 817.50, F.S.), racketeering (s. 895.03, F.S.), violating the Florida Money Laundering Act (s. 896.101, F.S.), and criminal offenses that involve attempts, solicitation, and conspiracy to commit an offense (s. 777.04, F.S.) that is one of the listed disqualifying offenses.

The bill repeals s. 7 of chapter 2012-73, Laws of Florida, requiring background screening of certain providers of the Division of Vocational Rehabilitation whose agreements are renewed or entered into on or after October 1, 2012. The bill amends s. 413.208, F.S., to provide that background screening of these providers applies only to agreements entered into or renewed after the Clearinghouse becomes operational and retains background screening results pursuant to s. 435.12, F.S.

The bill relocates language from s. 435.04(1)(e)2, F.S., to s. 435.12(2)(d), F.S. As a result, the submission of a photograph will be a requirement of the Clearinghouse, and not a requirement for all screenings conducted pursuant to chapter 435, F.S. This change will allow the agency to enter into an agreement with the DHSMV to verify photographs of individuals that have been background screened through the Clearinghouse by comparing the submitted photograph to the driver's license photograph.

The bill amends s. 435.04(1)(e), F.S., to require vendors who submit fingerprints on behalf of employers to submit specific identifying information for the person screened, including the applicant's:

- Full first name, middle initial, and last name;
- Social security number;
- Date of birth;
- Mailing address;
- Sex; and
- Race.

The bill modifies requirements relating to exemptions from disqualification for those persons with felony convictions who struggle to satisfy the monetary portions of their sentences, but have otherwise completed all other conditions. The bill amends s. 435.07, F.S., to delete the term "sanction", and replace it with "nonmonetary condition imposed by the court" to eliminate differing interpretations of the term sanction. Court ordered nonmonetary sanctions could include various types of community service and rehabilitation courses, such as anger management, theft prevention courses, and drug rehabilitation. Monetary sanctions that are court ordered could include any fee, fine, fund, lien, civil judgment, application, and costs of prosecution or restitution. The bill provides that the three-year waiting period to apply for an exemption from disqualification for a felony criminal offense does not apply to monetary sanctions, so long as all sanctions are paid or completed prior to an exemption being granted. The three-year waiting period will still apply for any felony disqualifying offense where, confinement, supervision, or nonmonetary condition is involved.

The bill amends s. 435.12, F.S., to require all screenings be initiated and registered by the employer through the Clearinghouse prior to referring an employee or potential employee for electronic fingerprint submission. The bill requires the registration to include the same information as required by s. 435.04, F.S., as amended by section 6 of the bill. In addition, the bill requires an individual taxpayer identification number to be included for registration of individuals that cannot legally obtain a social security number. This allows AHCA to obtain information on the initiating facility and provide for screening updates to be sent to the initiating facility as the information becomes available.¹² Providers will be able to obtain screening results much faster than screenings not initiated through the Clearinghouse.¹³

The bill amends ss. 408.809 and 435.12, F.S., to eliminate the need for rescreening persons once their fingerprints are retained by the FBI as part of its national retained print arrest notification program.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 322.142, F.S., relating to color photographic or digital imaged licenses.
- Section 2:** Amends s. 408.806, F.S., relating to license application process.
- Section 3:** Amends s. 408.809, F.S., relating to background screening; prohibited offenses.
- Section 4:** Amends s. 413.208, F.S., relating to service providers; quality assurance; fitness for responsibilities; background screening.
- Section 5:** Repeals s. 7 of chapter 2012-73, Laws of Florida, relating to background screening requirements for registrants of the Division of Vocational Rehabilitation.
- Section 6:** Amends s. 435.04, F.S., relating to level 2 screening standards.
- Section 7:** Amends s. 435.05, F.S., relating to requirements for covered employees and employers.
- Section 8:** Amends s. 435.07, F.S., relating to exemptions from disqualification.
- Section 9:** Amends s. 435.12, F.S., relating to the Care Provider Background Screening Clearinghouse.
- Section 10:** Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

¹² *Id.*

¹³ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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 20, 2014, the Judiciary Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment did not make any significant changes to the bill as filed, but lined the bill up with its Senate companion, CS/SB 674, by revising certain terminology and providing for the participation in the FBI fingerprint retention program once it is implemented.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

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1 A bill to be entitled

2 An act relating to background screening; amending s.
3 322.142, F.S.; authorizing the Department of Highway
4 Safety and Motor Vehicles to share reproductions of
5 driver license images with the Department of Health
6 and the Agency for Health Care Administration for
7 specified purposes; amending s. 408.806, F.S.;
8 revising the requirements for licensure; revising a
9 provision requiring an affidavit; amending s. 408.809,
10 F.S.; exempting a person whose fingerprints are
11 already enrolled in a certain Federal Bureau of
12 Investigation program from the requirement that such
13 fingerprints be forwarded to the bureau; requiring
14 certain persons to submit their fingerprints
15 electronically; requiring the Department of Law
16 Enforcement to retain fingerprints when the department
17 begins participation in a certain program; revising
18 requirements for proof of compliance with level 2
19 screening standards; revising terminology; adding
20 additional disqualifying offenses to background
21 screening requirements; amending s. 413.208, F.S.;
22 providing applicability for background screening
23 requirements for certain registrants; repealing s. 7
24 of chapter 2012-73, Laws of Florida, relating to
25 background screening requirements; amending s. 435.04,
26 F.S.; revising information to be required for vendors

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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27 submitting employee fingerprints; adding an additional
 28 disqualifying offense to background screening
 29 requirements; amending s. 435.05, F.S.; revising a
 30 provision requiring the annual submission of an
 31 affidavit; amending s. 435.07, F.S.; revising criteria
 32 for an exemption from disqualification for an employee
 33 under certain conditions; amending s. 435.12, F.S.;
 34 requiring the fingerprints of an employee required to
 35 be screened by a specified agency and included in the
 36 clearinghouse also to be retained in the national
 37 retained print arrest notification program at a
 38 specified time; requiring simultaneous submission of a
 39 photographic image and electronic fingerprints to the
 40 Care Provider Background Screening Clearinghouse;
 41 requiring an employer to follow certain criminal
 42 history check procedures and include specified
 43 information regarding referral and registration of an
 44 employee for electronic fingerprinting with the
 45 clearinghouse; providing an effective date.

46
 47 Be It Enacted by the Legislature of the State of Florida:

48
 49 Section 1. Subsection (4) of section 322.142, Florida
 50 Statutes, is amended to read:

51 322.142 Color photographic or digital imaged licenses.—

52 (4) The department may maintain a film negative or print

53 file. The department shall maintain a record of the digital
 54 image and signature of the licensees, together with other data
 55 required by the department for identification and retrieval.
 56 Reproductions from the file or digital record are exempt from
 57 the provisions of s. 119.07(1) and may ~~shall~~ be made and issued
 58 only:

- 59 (a) For departmental administrative purposes;
- 60 (b) For the issuance of duplicate licenses;
- 61 (c) In response to law enforcement agency requests;
- 62 (d) To the Department of Business and Professional
 63 Regulation and the Department of Health pursuant to an
 64 interagency agreement for the purpose of accessing digital
 65 images for reproduction of licenses issued by the Department of
 66 Business and Professional Regulation or the Department of
 67 Health;
- 68 (e) To the Department of State pursuant to an interagency
 69 agreement to facilitate determinations of eligibility of voter
 70 registration applicants and registered voters in accordance with
 71 ss. 98.045 and 98.075;
- 72 (f) To the Department of Revenue pursuant to an
 73 interagency agreement for use in establishing paternity and
 74 establishing, modifying, or enforcing support obligations in
 75 Title IV-D cases;
- 76 (g) To the Department of Children and Families pursuant to
 77 an interagency agreement to conduct protective investigations
 78 under part III of chapter 39 and chapter 415;

79 (h) To the Department of Children and Families pursuant to
 80 an interagency agreement specifying the number of employees in
 81 each of that department's regions to be granted access to the
 82 records for use as verification of identity to expedite the
 83 determination of eligibility for public assistance and for use
 84 in public assistance fraud investigations;

85 (i) To the Agency for Health Care Administration pursuant
 86 to an interagency agreement for the purpose of authorized
 87 agencies verifying photographs in the Care Provider Background
 88 Screening Clearinghouse authorized in s. 435.12;

89 ~~(j)(i)~~ To the Department of Financial Services pursuant to
 90 an interagency agreement to facilitate the location of owners of
 91 unclaimed property, the validation of unclaimed property claims,
 92 and the identification of fraudulent or false claims;

93 ~~(k)(j)~~ To district medical examiners pursuant to an
 94 interagency agreement for the purpose of identifying a deceased
 95 individual, determining cause of death, and notifying next of
 96 kin of any investigations, including autopsies and other
 97 laboratory examinations, authorized in s. 406.11; or

98 ~~(l)(k)~~ To the following persons for the purpose of
 99 identifying a person as part of the official work of a court:

- 100 1. A justice or judge of this state;
- 101 2. An employee of the state courts system who works in a
- 102 position that is designated in writing for access by the Chief
- 103 Justice of the Supreme Court or a chief judge of a district or
- 104 circuit court, or by his or her designee; or

105 | 3. A government employee who performs functions on behalf
 106 | of the state courts system in a position that is designated in
 107 | writing for access by the Chief Justice or a chief judge, or by
 108 | his or her designee.

109 | Section 2. Subsections (1) and (8) of section 408.806,
 110 | Florida Statutes, are amended to read:

111 | 408.806 License application process.—

112 | (1) An application for licensure must be made to the
 113 | agency on forms furnished by the agency, submitted under oath or
 114 | attestation, and accompanied by the appropriate fee in order to
 115 | be accepted and considered timely. The application must contain
 116 | information required by authorizing statutes and applicable
 117 | rules and must include:

118 | (a) The name, address, and social security number, or
 119 | individual taxpayer identification number if a social security
 120 | number cannot legally be obtained, of:

- 121 | 1. The applicant;
- 122 | 2. The administrator or a similarly titled person who is
 123 | responsible for the day-to-day operation of the provider;
- 124 | 3. The financial officer or similarly titled person who is
 125 | responsible for the financial operation of the licensee or
 126 | provider; and
- 127 | 4. Each controlling interest if the applicant or
 128 | controlling interest is an individual.

129 | (b) The name, address, and federal employer identification
 130 | number or taxpayer identification number of the applicant and

131 each controlling interest if the applicant or controlling
 132 interest is not an individual.

133 (c) The name by which the provider is to be known.

134 (d) The total number of beds or capacity requested, as
 135 applicable.

136 (e) The name of the person or persons under whose
 137 management or supervision the provider will operate and the name
 138 of the administrator, if required.

139 (f) If the applicant offers continuing care agreements as
 140 defined in chapter 651, proof shall be furnished that the
 141 applicant has obtained a certificate of authority as required
 142 for operation under chapter 651.

143 (g) Other information, including satisfactory inspection
 144 results, that the agency finds necessary to determine the
 145 ability of the applicant to carry out its responsibilities under
 146 this part, authorizing statutes, and applicable rules.

147 (h) An attestation affidavit, under penalty of perjury, as
 148 required in s. 435.05(3), stating compliance with the provisions
 149 of this section and chapter 435.

150 (8) The agency may establish procedures for the electronic
 151 notification and submission of required information, including,
 152 but not limited to:

153 (a) Licensure applications.

154 (b) Required signatures.

155 (c) Payment of fees.

156 (d) Notarization or attestation of applications.

157
 158 Requirements for electronic submission of any documents required
 159 by this part or authorizing statutes may be established by rule.
 160 As an alternative to sending documents as required by
 161 authorizing statutes, the agency may provide electronic access
 162 to information or documents.

163 Section 3. Subsections (2) and (4) of section 408.809,
 164 Florida Statutes, are amended to read:

165 408.809 Background screening; prohibited offenses.-

166 (2) Every 5 years following his or her licensure,
 167 employment, or entry into a contract in a capacity that under
 168 subsection (1) would require level 2 background screening under
 169 chapter 435, each such person must submit to level 2 background
 170 rescreening as a condition of retaining such license or
 171 continuing in such employment or contractual status. For any
 172 such rescreening, the agency shall request the Department of Law
 173 Enforcement to forward the person's fingerprints to the Federal
 174 Bureau of Investigation for a national criminal history record
 175 check unless the person's fingerprints are enrolled in the
 176 Federal Bureau of Investigation's national retained print arrest
 177 notification program. If the fingerprints of such a person are
 178 not retained by the Department of Law Enforcement under s.
 179 943.05(2)(g) and (h), the person must submit fingerprints
 180 electronically ~~file a complete set of fingerprints with the~~
 181 ~~agency and the agency shall forward the fingerprints to the~~
 182 Department of Law Enforcement for state processing, and the

183 Department of Law Enforcement shall forward the fingerprints to
 184 the Federal Bureau of Investigation for a national criminal
 185 history record check. The fingerprints shall ~~may~~ be retained by
 186 the Department of Law Enforcement under s. 943.05(2)(g) and (h)
 187 and enrolled in the national retained print arrest notification
 188 program when the Department of Law Enforcement begins
 189 participation in the program. The cost of the state and national
 190 criminal history records checks required by level 2 screening
 191 may be borne by the licensee or the person fingerprinted. Until
 192 a specified agency is fully implemented ~~the person's background~~
 193 ~~screening results are retained~~ in the clearinghouse created
 194 under s. 435.12, the agency may accept as satisfying the
 195 requirements of this section proof of compliance with level 2
 196 screening standards submitted within the previous 5 years to
 197 meet any provider or professional licensure requirements of the
 198 agency, the Department of Health, the Department of Elderly
 199 Affairs, the Agency for Persons with Disabilities, the
 200 Department of Children and Families ~~Family Services~~, or the
 201 Department of Financial Services for an applicant for a
 202 certificate of authority or provisional certificate of authority
 203 to operate a continuing care retirement community under chapter
 204 651, provided that:
 205 (a) The screening standards and disqualifying offenses for
 206 the prior screening are equivalent to those specified in s.
 207 435.04 and this section;

208 (b) The person subject to screening has not had a break in
 209 service from a position that requires level 2 screening for more
 210 than 90 days; and

211 (c) Such proof is accompanied, under penalty of perjury,
 212 by an attestation ~~affidavit~~ of compliance with ~~the provisions of~~
 213 chapter 435 and this section using forms provided by the agency.

214 (4) In addition to the offenses listed in s. 435.04, all
 215 persons required to undergo background screening pursuant to
 216 this part or authorizing statutes must not have an arrest
 217 awaiting final disposition for, must not have been found guilty
 218 of, regardless of adjudication, or entered a plea of nolo
 219 contendere or guilty to, and must not have been adjudicated
 220 delinquent and the record not have been sealed or expunged for
 221 any of the following offenses or any similar offense of another
 222 jurisdiction:

223 (a) Any authorizing statutes, if the offense was a felony.

224 (b) This chapter, if the offense was a felony.

225 (c) Section 409.920, relating to Medicaid provider fraud.

226 (d) Section 409.9201, relating to Medicaid fraud.

227 (e) Section 741.28, relating to domestic violence.

228 (f) Section 777.04, relating to attempts, solicitation,
 229 and conspiracy to commit an offense listed in this subsection.

230 ~~(g)(f)~~ Section 817.034, relating to fraudulent acts
 231 through mail, wire, radio, electromagnetic, photoelectronic, or
 232 photooptical systems.

233 (h)~~(g)~~ Section 817.234, relating to false and fraudulent
 234 insurance claims.

235 (i) Section 817.481, relating to obtaining goods by using
 236 a false or expired credit card or other credit device, if the
 237 offense was a felony.

238 (j) Section 817.50, relating to fraudulently obtaining
 239 goods or services from a health care provider.

240 (k)~~(h)~~ Section 817.505, relating to patient brokering.

241 (l)~~(i)~~ Section 817.568, relating to criminal use of
 242 personal identification information.

243 (m)~~(j)~~ Section 817.60, relating to obtaining a credit card
 244 through fraudulent means.

245 (n)~~(k)~~ Section 817.61, relating to fraudulent use of
 246 credit cards, if the offense was a felony.

247 (o)~~(l)~~ Section 831.01, relating to forgery.

248 (p)~~(m)~~ Section 831.02, relating to uttering forged
 249 instruments.

250 (q)~~(n)~~ Section 831.07, relating to forging bank bills,
 251 checks, drafts, or promissory notes.

252 (r)~~(o)~~ Section 831.09, relating to uttering forged bank
 253 bills, checks, drafts, or promissory notes.

254 (s)~~(p)~~ Section 831.30, relating to fraud in obtaining
 255 medicinal drugs.

256 (t)~~(q)~~ Section 831.31, relating to the sale, manufacture,
 257 delivery, or possession with the intent to sell, manufacture, or

258 deliver any counterfeit controlled substance, if the offense was
 259 a felony.

260 (u) Section 895.03, relating to racketeering and
 261 collection of unlawful debts.

262 (v) Section 896.101, relating to the Florida Money
 263 Laundering Act.

264 Section 4. Subsection (5) is added to section 413.208,
 265 Florida Statutes, to read:

266 413.208 Service providers; quality assurance; fitness for
 267 responsibilities; background screening.-

268 (5) The background screening requirements of this section
 269 apply only to registrations entered into or renewed with the
 270 division after the Care Provider Background Screening
 271 Clearinghouse becomes operational and retains the background
 272 screening results in the clearinghouse under s. 435.12.

273 Section 5. Section 7 of chapter 2012-73, Laws of Florida,
 274 is repealed.

275 Section 6. Paragraph (e) of subsection (1) of section
 276 435.04, Florida Statutes, is amended, present paragraphs (d)
 277 through (yy) of subsection (2) are redesignated as paragraphs
 278 (e) through (zz), respectively, and a new paragraph (d) is added
 279 to that subsection, to read:

280 435.04 Level 2 screening standards.-

281 (1)

282 (e) Vendors who submit fingerprints on behalf of employers
 283 must:

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284 1. Meet the requirements of s. 943.053; and
 285 2. Have the ability to communicate electronically with the
 286 state agency accepting screening results from the Department of
 287 Law Enforcement and provide the applicant's full first name,
 288 middle initial, and last name; social security number or
 289 individual taxpayer identification number; date of birth;
 290 mailing address; sex; and race ~~a photograph of the applicant~~
 291 ~~taken at the time the fingerprints are submitted.~~

292 (2) The security background investigations under this
 293 section must ensure that no persons subject to the provisions of
 294 this section have been arrested for and are awaiting final
 295 disposition of, have been found guilty of, regardless of
 296 adjudication, or entered a plea of nolo contendere or guilty to,
 297 or have been adjudicated delinquent and the record has not been
 298 sealed or expunged for, any offense prohibited under any of the
 299 following provisions of state law or similar law of another
 300 jurisdiction:

301 (d) Section 777.04, relating to attempts, solicitation,
 302 and conspiracy to commit an offense listed in this subsection.

303 Section 7. Subsection (3) of section 435.05, Florida
 304 Statutes, is amended to read:

305 435.05 Requirements for covered employees and employers.—
 306 Except as otherwise provided by law, the following requirements
 307 apply to covered employees and employers:

308 (3) Each employer licensed or registered with an agency
 309 must conduct level 2 background screening and must submit to the

310 agency annually or at the time of license renewal, under penalty
 311 of perjury, a signed attestation ~~affidavit~~ attesting to
 312 compliance with the provisions of this chapter.

313 Section 8. Subsections (1) and (2) of section 435.07,
 314 Florida Statutes, are amended to read:

315 435.07 Exemptions from disqualification.—Unless otherwise
 316 provided by law, the provisions of this section apply to
 317 exemptions from disqualification for disqualifying offenses
 318 revealed pursuant to background screenings required under this
 319 chapter, regardless of whether those disqualifying offenses are
 320 listed in this chapter or other laws.

321 (1) (a) The head of the appropriate agency may grant to any
 322 employee otherwise disqualified from employment an exemption
 323 from disqualification for:

324 1. (a) Felonies for which at least 3 years have elapsed
 325 since the applicant for the exemption has completed or been
 326 lawfully released from confinement, supervision, or nonmonetary
 327 condition imposed by the court ~~sanction~~ for the disqualifying
 328 felony;

329 2. (b) Misdemeanors prohibited under any of the statutes
 330 cited in this chapter or under similar statutes of other
 331 jurisdictions for which the applicant for the exemption has
 332 completed or been lawfully released from confinement,
 333 supervision, or nonmonetary condition imposed by the court
 334 ~~sanction~~;

335 3. (c) Offenses that were felonies when committed but that

336 are now misdemeanors and for which the applicant for the
 337 exemption has completed or been lawfully released from
 338 confinement, supervision, or nonmonetary condition imposed by
 339 the court ~~sanction~~; or

340 4.(d) Findings of delinquency. For offenses that would be
 341 felonies if committed by an adult and the record has not been
 342 sealed or expunged, the exemption may not be granted until at
 343 least 3 years have elapsed since the applicant for the exemption
 344 has completed or been lawfully released from confinement,
 345 supervision, or nonmonetary condition imposed by the court
 346 ~~sanction~~ for the disqualifying offense.

347 (b) A person applying for an exemption who was ordered to
 348 pay any amount for any fee, fine, fund, lien, civil judgment,
 349 application, costs of prosecution, trust, or restitution as part
 350 of the judgment and sentence for any disqualifying felony or
 351 misdemeanor must have paid the court-ordered amount in full
 352 before being eligible for the exemption.

353
 354 For the purposes of this subsection, the term "felonies" means
 355 both felonies prohibited under any of the statutes cited in this
 356 chapter or under similar statutes of other jurisdictions.

357 (2) Persons employed, or applicants for employment, by
 358 treatment providers who treat adolescents 13 years of age and
 359 older who are disqualified from employment solely because of
 360 crimes under s. 817.563, s. 893.13, or s. 893.147 may be
 361 exempted from disqualification from employment pursuant to this

362 chapter without application of the waiting period in
 363 subparagraph (1)(a) ~~paragraph (1)(a)~~.

364 Section 9. Subsection (2) of section 435.12, Florida
 365 Statutes, is amended to read:

366 435.12 Care Provider Background Screening Clearinghouse.—

367 (2)(a) To ensure that the information in the clearinghouse
 368 is current, the fingerprints of an employee required to be
 369 screened by a specified agency and included in the clearinghouse
 370 must be:

371 1. Retained by the Department of Law Enforcement pursuant
 372 to s. 943.05(2)(g) and (h) and (3), and the Department of Law
 373 Enforcement must report the results of searching those
 374 fingerprints against state incoming arrest fingerprint
 375 submissions to the Agency for Health Care Administration for
 376 inclusion in the clearinghouse.

377 2. Retained by the Federal Bureau of Investigation in the
 378 national retained print arrest notification program as soon as
 379 the Department of Law Enforcement begins participation in such
 380 program. Arrest prints shall be searched against retained prints
 381 at the Federal Bureau of Investigation and notification of
 382 arrests shall be forwarded to the Department of Law Enforcement
 383 and reported to the Agency for Health Care Administration for
 384 inclusion in the clearinghouse.

385 3.2. Resubmitted for a Federal Bureau of Investigation
 386 national criminal history check every 5 years until such time as
 387 the fingerprints are retained by the Federal Bureau of

388 Investigation.

389 ~~4.3.~~ Subject to retention on a 5-year renewal basis with
 390 fees collected at the time of initial submission or resubmission
 391 of fingerprints.

392 5. Submitted with a photograph of the person taken at the
 393 time the fingerprints are submitted.

394 (b) Until such time as the fingerprints are enrolled in
 395 the national retained print arrest notification program ~~retained~~
 396 at the Federal Bureau of Investigation, an employee with a break
 397 in service of more than 90 days from a position that requires
 398 screening by a specified agency must submit to a national
 399 screening if the person returns to a position that requires
 400 screening by a specified agency.

401 (c) An employer of persons subject to screening by a
 402 specified agency must register with the clearinghouse and
 403 maintain the employment status of all employees within the
 404 clearinghouse. Initial employment status and any changes in
 405 status must be reported within 10 business days.

406 (d) An employer must register with and initiate all
 407 criminal history checks through the clearinghouse before
 408 referring an employee or potential employee for electronic
 409 fingerprint submission to the Department of Law Enforcement. The
 410 registration must include the employee's full first name, middle
 411 initial, and last name; social security number; date of birth;
 412 mailing address; sex; and race. Individuals, persons,
 413 applicants, and controlling interests that cannot legally obtain

CS/HB 463



2014

414 | a social security number must provide an individual taxpayer
415 | identification number.

416 | Section 10. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 455 Restitution for Juvenile Offenses
SPONSOR(S): Criminal Justice Subcommittee; Eagle
TIED BILLS: IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	Cunningham
2) Health & Human Services Committee		Poche 	Calamas 
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Section 985.437, F.S., authorizes a court with jurisdiction over a child that has been adjudicated delinquent to order the child to pay restitution to the victim for any damage or loss caused by the child's offense in a reasonable amount or manner. Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or by performing community service. A parent or guardian may be absolved of liability for restitution in their child's criminal case if the court makes a finding that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."

The bill amends s. 985.437, F.S., in cases that the court has determined an order of restitution is appropriate, to *require*, rather than authorize, the court to order a child *and* the child's parent or legal guardian to pay restitution. The bill further amends s. 985.437, F.S., to:

- Authorize the court to set up a payment plan if the child and the child's parents or legal guardians are unable to pay the restitution in one lump-sum payment;
- Absolve a parent or guardian of any liability for restitution if, after a hearing:
 - The court finds that it is the child's first referral *and* the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; *or*
 - If the victim entitled to the restitution is that child's parent or guardian;
- Authorize the court to order both of the child's parents or guardians liable for such child's restitution, regardless of whether one parent has sole parental responsibility for the child; and
- Specify that the Department of Children and Families, a foster parent, or the community-based care lead agency supervising the placement of a child while under contract with the department is not considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent.

The bill makes conforming changes to s. 985.35, F.S., and amends s. 985.513, F.S., to remove duplicative language relating to the court's authority to order a parent or guardian to be responsible for the child's restitution.

To the extent that the bill increases the number and/or length of restitution hearings, which must be conducted by the court prior to entering an order of restitution, it could create an insignificant increased workload on the courts.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Restitution in Juvenile Criminal Cases

Section 985.437, F.S., authorizes, but does not require, a court with jurisdiction over a child that has been adjudicated delinquent to order the child to pay restitution to the victim for *any* damage¹ or loss caused by the child's offense² in a reasonable amount or manner.³ Similarly, s. 985.35, F.S., authorizes the court to place a child found to have committed a violation of law in a probation program.⁴ The probation program may include restitution in money or in kind.⁵ The court determines the amount or manner of restitution that is reasonable.⁶

To enter an order of restitution, a trial court must first conduct a restitution hearing addressing the child's ability to pay and the amount of restitution to which the victim is entitled.⁷ A restitution hearing is not required if the child previously entered into an agreement to pay⁸ or has waived his or her right to attend a restitution hearing.⁹ When restitution is ordered by the court, the amount of restitution may not exceed an amount the child or the parent or guardian could reasonably be expected to pay.¹⁰

Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or by performing community service.¹¹ However, a parent or guardian may be absolved of any liability for restitution in their child's criminal case if, after a hearing, the court finds that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."¹²

The clerk of the circuit court receives and dispenses restitution payments, and must notify the court if restitution is not made. The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or until the court orders otherwise.¹³

¹ "Any damage" has been interpreted by Florida's courts to include damage for pain and suffering. *C.W. v. State*, 655 So.2d 87 (Fla. 1995).

² The damage or loss must be directly or indirectly related to the child's offense or criminal episode. *L.R.L. v. State*, 9 So.3d 714 (Fla. 2d DCA 2009).

³ If restitution is ordered, it becomes a condition of probation, or if the child is committed to a residential commitment program, part of community-based sanctions upon release from the program. Section 985.437(1), F.S.

⁴ Section 985.35(4) and (5), F.S.

⁵ Section 985.35(4)(a), F.S.

⁶ Section 985.437(2), F.S.

⁷ *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008). If a court intends to establish an amount of restitution based solely on evidence adduced at a hearing of a charge of delinquency, the juvenile must be given notice.

⁸ *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).

⁹ *T.L. v. State*, 967 So.2d 421 (Fla. 1st DCA 2007).

¹⁰ Section 985.437(2), F.S.

¹¹ Section 985.437(2), F.S. Similar to the process for juveniles, a parent or guardian cannot be ordered to pay restitution arising from offenses committed by their minor child, without the court providing the parent with meaningful notice and an opportunity to be heard, or without making a determination of the parents' ability to do so. See *S.B.L. v. State*, 737 So.2d 1131 (Fla. 1st DCA 1999); *A.T. v. State*, 706 So.2d 109 (Fla. 2d DCA 1998); and *M.H. v. State*, 698 So.2d 395 (Fla. 4th DCA 1997).

¹² Section 985.437(4), F.S.

¹³ Section 985.437(5), F.S.

Court's Powers over a Juvenile Offender's Parent or Guardian

Section 985.513, F.S., authorizes, but does not require, a court that has jurisdiction over a child that has been adjudicated delinquent to order the parents or guardians of such child to perform community service and participate in family counseling. The statute also authorizes the court to:

- Order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense; and
- Require the child's parent or legal guardian to be responsible for any restitution ordered against the child, as provided under s. 985.437, F.S.¹⁴

Current statute does not specifically exempt the Department of Children and Families, a foster parent, or a community-based care organization supervising a child from paying restitution when a court requires the child's parent or legal guardian to be responsible for restitution ordered against the child.¹⁵

Failing to Pay Restitution Order

Section 985.0301(h), F.S., states that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089, F.S. Section 775.089, F.S., provides that a restitution order may be enforced in the same manner as a judgment in a civil lien. Thus, if a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the parent or child's real property.¹⁶ The court may transfer a restitution order to a collection court or a private collection agency to collect unpaid restitution.¹⁷

Effect of the Bill

The bill amends s. 985.437, F.S., in cases that the court has determined an order of restitution is appropriate, to *require*, rather than authorize, the court to order a child *and* the child's parent or legal guardian to pay restitution. The bill further amends s. 985.437, F.S., to authorize the court to set up a payment plan if the child and the child's parents or legal guardians are unable to pay the restitution in one lump-sum payment. The payment plan must reflect the ability of a child and the child's parent or legal guardian to pay the restitution amount.

The bill absolves a parent or guardian of any liability for restitution if, after a hearing:

- The court finds that it is the child's first referral *and* the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; *or*
- The victim entitled to the restitution is that child's parent or guardian.

The bill authorizes the court to order both of the child's parents or guardians liable for such child's restitution, regardless of whether one parent has sole parental responsibility for the child.

The bill specifies that the Department of Children and Families, which includes a foster parent or community-based care lead agency, is not considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent, as defined in s. 39.01(15), F.S.

The bill makes conforming changes to s. 985.35, F.S., and amends s. 985.513, F.S., to remove duplicative language relating to the court's authority to order a parent or guardian to be responsible for the child's restitution.

¹⁴ Section 985.513(1)(b), F.S.

¹⁵ E-mail correspondence with the Department of Children and Families, March 18, 2014, on file with committee staff.

¹⁶ Section 775.089(5), F.S.

¹⁷ Section 985.045, F.S., also states that this is allowed in a case where the circuit court has retained jurisdiction over the child and the child's parent or legal guardian.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 985.35, F.S., relating to adjudicatory hearings; withheld adjudications; orders of adjudication.
- Section 2:** Amends s. 985.437, F.S., relating to restitution.
- Section 3:** Amends s. 985.513, F.S., relating to powers of the court over parent or guardian at disposition.
- Section 4:** Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill amends s. 985.437, F.S., in cases that the court has determined an order of restitution is appropriate, to *require*, rather than authorize, the court to order a child *and* the child's parent or legal guardian to pay restitution. To enter an order of restitution, the court must conduct a restitution hearing. To the extent that the bill increases the number and/or length of restitution hearings, the bill may result in a workload increase for the court system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Parents and legal guardians of children that have been adjudicated delinquent will be liable for restitution in money or in kind for damages caused by the child's offense. Therefore, a victim of a child's offense may be more likely to receive restitution.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the requirement that a parent cosign the child's promissory note since it is no longer necessary with the parent or guardian being directly liable for any restitution;
- Authorizes the court to order both of the child's parents or guardians liable for restitution, regardless of whether one parent has sole parental responsibility for the child;
- Clarifies that foster parents and community-based care lead agencies are not considered guardians liable for restitution under the act; and
- Conforms s. 985.35, F.S., to changes made by the act.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

A bill to be entitled

An act relating to restitution for juvenile offenses;
amending s. 985.35, F.S.; conforming provisions to
changes made by the act; amending s. 985.437, F.S.;
requiring a child's parent or guardian, in addition to
the child, to make restitution for damage or loss
caused by the child's offense; providing for payment
plans in certain circumstances; authorizing the parent
or guardian to be absolved of liability for
restitution in certain circumstances; authorizing the
court to order both parents or guardians liable for
the child's restitution regardless of one parent
having sole parental responsibility; specifying that
the Department of Children and Families, foster
parents, and specified agencies contracted with the
department are not guardians for purposes of
restitution; amending s. 985.513, F.S.; removing
duplicative provisions authorizing the court to
require a parent or guardian to be responsible for any
restitution ordered against the child; providing an
effective date.

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

Section 1. Paragraph (a) of subsection (4) of section
985.35, Florida Statutes, is amended to read:

27 985.35 Adjudicatory hearings; withheld adjudications;
 28 orders of adjudication.—

29 (4) If the court finds that the child named in the
 30 petition has committed a delinquent act or violation of law, it
 31 may, in its discretion, enter an order stating the facts upon
 32 which its finding is based but withholding adjudication of
 33 delinquency.

34 (a) Upon withholding adjudication of delinquency, the
 35 court may place the child in a probation program under the
 36 supervision of the department or under the supervision of any
 37 other person or agency specifically authorized and appointed by
 38 the court. The court may, as a condition of the program, impose
 39 as a penalty component restitution in money or in kind to be
 40 made by the child and the child's parent or guardian as provided
 41 in s. 985.437, community service, a curfew, urine monitoring,
 42 revocation or suspension of the driver's license of the child,
 43 or other nonresidential punishment appropriate to the offense,
 44 and may impose as a rehabilitative component a requirement of
 45 participation in substance abuse treatment, or school or other
 46 educational program attendance.

47 Section 2. Subsection (5) of section 985.437, Florida
 48 Statutes, is renumbered as subsection (7), subsections (1), (2),
 49 and (4) are amended, and new subsections (5) and (6) are added
 50 to that section, to read:

51 985.437 Restitution.—

52 (1) Regardless of whether adjudication is imposed or

53 withheld, the court that has jurisdiction over a an adjudicated
 54 ~~delinquent~~ child may, by an order stating the facts upon which a
 55 determination of a sanction and rehabilitative program was made
 56 at the disposition hearing, order the child and the child's
 57 parent or guardian to make restitution in the manner provided in
 58 this section. This order shall be part of the child's probation
 59 program to be implemented by the department or, in the case of a
 60 committed child, as part of the community-based sanctions
 61 ordered by the court at the disposition hearing or before the
 62 child's release from commitment.

63 (2) If the court orders restitution, the court shall ~~may~~
 64 order the child and the child's parent or guardian to make
 65 restitution in money, through a promissory note ~~assigned by the~~
 66 ~~child's parent or guardian~~, or in kind for any damage or loss
 67 caused by the child's offense in a reasonable amount or manner
 68 to be determined by the court. When restitution is ordered by
 69 the court, the amount of restitution may not exceed an amount
 70 the child and the parent or guardian could reasonably be
 71 expected to pay or make. If the child and the child's parent or
 72 guardian are unable to pay the restitution in one lump-sum
 73 payment, the court may set up a payment plan that reflects their
 74 ability to pay the restitution amount.

75 (4) The parent or guardian may be absolved of liability
 76 for restitution under this section, if:

77 (a) After a hearing, the court finds that it is the
 78 child's first referral to the delinquency system and A finding

79 ~~by the court, after a hearing,~~ that the parent or guardian has
 80 made diligent and good faith efforts to prevent the child from
 81 engaging in delinquent acts; or

82 (b) The victim entitled to restitution as a result of
 83 damage or loss caused by the child's offense is that child's
 84 parent or guardian absolves the parent or guardian of liability
 85 for restitution under this section.

86 (5) The court may order both parents or guardians liable
 87 for restitution associated with the child's care,
 88 notwithstanding instances when one parent or guardian has sole
 89 parental responsibility.

90 (6) For purposes of this section, the Department of
 91 Children and Families, a foster parent with whom the child is
 92 placed, or the community-based care lead agency supervising the
 93 placement of the child pursuant to a contract with the
 94 Department of Children and Families are not considered guardians
 95 responsible for restitution for the delinquent acts of a child
 96 who is found to be dependent as defined in s. 39.01(15).

97 Section 3. Subsection (1) of section 985.513, Florida
 98 Statutes, is amended to read:

99 985.513 Powers of the court over parent or guardian at
 100 disposition.—

101 (1) The court that has jurisdiction over an adjudicated
 102 delinquent child may, by an order stating the facts upon which a
 103 determination of a sanction and rehabilitative program was made
 104 at the disposition hearing,+

105 ~~(a)~~ order the child's parent or guardian, together with
 106 the child, to render community service in a public service
 107 program or to participate in a community work project. In
 108 addition to the sanctions imposed on the child, the court may
 109 order the child's parent or guardian to perform community
 110 service if the court finds that the parent or guardian did not
 111 make a diligent and good faith effort to prevent the child from
 112 engaging in delinquent acts.

113 ~~(b) Order the parent or guardian to make restitution in~~
 114 ~~money or in kind for any damage or loss caused by the child's~~
 115 ~~offense. The court may also require the child's parent or legal~~
 116 ~~guardian to be responsible for any restitution ordered against~~
 117 ~~the child, as provided under s. 985.437. The court shall~~
 118 ~~determine a reasonable amount or manner of restitution, and~~
 119 ~~payment shall be made to the clerk of the circuit court as~~
 120 ~~provided in s. 985.437. The court may retain jurisdiction, as~~
 121 provided under s. 985.0301, over the child and the child's
 122 parent or legal guardian whom the court has ordered to pay
 123 restitution until the restitution order is satisfied or the
 124 court orders otherwise.

125 Section 4. This act shall take effect July 1, 2014.

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	10 Y, 0 N	Clark	Pridgeon
3) Health & Human Services Committee		Poche <i>(initials)</i>	Calamas <i>(initials)</i>

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:

Background

Department of Elder Affairs

Florida has approximately 4,700,000 residents aged 60 and older.¹ 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 2030.²

The Department of Elder Affairs (DOEA), established in 1992, serves as the primary agency for administering state human services programs for the elderly and developing policy recommendations for long-term care.³ Section 20.41, F.S., creates the DOEA and details some of its roles and responsibilities.⁴ For example, the DOEA is statutorily required to administer the State Long-Term Care Ombudsman Council⁵ and the local long-term care ombudsman councils,^{6,7} 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).⁸ 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.⁹

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.¹⁰ Each of the AAAs then contract with community care lead agencies to provide actual services to the elderly in each PSA.¹¹

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.¹² 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.

¹ Florida Department of Elder Affairs, *Summary of Programs and Services 2014*, page 9 (on file with Health and Human Services Committee staff).

² *Id.*

³ S. 430.03(1), F.S.

⁴ 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.

⁵ S. 400.0067, F.S.

⁶ S. 400.0069, F.S.

⁷ S. 20.41(4), F.S.

⁸ S. 20.41(5), F.S.

⁹ S. 430.04, F.S.

¹⁰ S. 20.41(6), F.S.

¹¹ *Id.*

¹² 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.¹³ The LTCOP was established by Title VII of the federal Older Americans Act¹⁴ and its operation is governed by state statute.¹⁵ Through 13 districts¹⁶ 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.¹⁷

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."¹⁸ 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.¹⁹ The office must also publish the information pertaining to the number and types of complaints received by the program on a quarterly basis.²⁰ 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.²¹

Ombudsmen also complete annual assessments of each long-term care facility in the state to ensure the health, safety, and welfare of the residents.²² 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.²³ The AHCA also conducts 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

¹³ For 2012-2013, 366 volunteers worked an estimated 88,000 hours which resulted in estimated average savings in salaries and administrative costs of \$1,948,320. See Florida's Long-Term Care Ombudsman Program, *2012-2013 Annual Report*, available at <http://ombudsman.myflorida.com/publications/ar/LTCOP%20ANNUAL%20REPORT.pdf> (also on file with Health and Human Services Committee staff).

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

¹⁵ Part I, Ch. 400, F.S.

¹⁶ The 13 districts are: Northwest Florida, Panhandle, North Central Florida, First Coast, West Coast, West Central Florida, East Central Florida, Southwest Florida, Palm Beach County, Broward County, South Dade & the Keys, North Dade, and South Central Florida. See *supra*, FN 1 at page 27.

¹⁷ *Id.* at page 76.

¹⁸ Florida's Long-Term Care Ombudsman Program, *Residents and Families*, available at <http://ombudsman.myflorida.com/ResidentFam.php> (last visited on March 17, 2014).

¹⁹ S. 400.0089, F.S.

²⁰ *Id.*

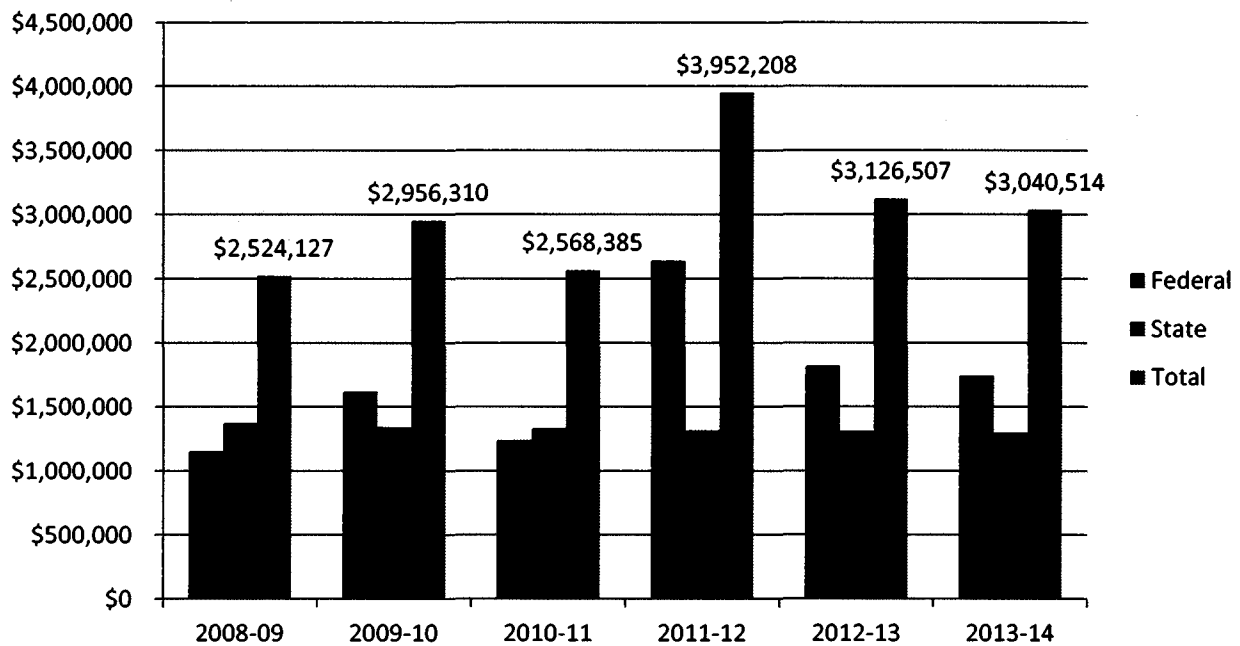
²¹ 42 U.S.C. s. 3058g(c) and 42 U.S.C. s. 3058g(h)(1).

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

²³ *Id.*

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 LTCOP²⁴:



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 investigated²⁵:

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
2012-2013	4,074	4,091	7,336

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.²⁶ 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 under the statute to carry out the duties of the LTCOP and creates a separate definition of “state

²⁴ See supra, FN 1 at page 77.

²⁵ Id. at page 78.

²⁶ See supra, FN 14.

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 Statewide 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 removing a member from the Council.

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 references 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 references 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 references 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.²⁷

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

²⁷ The district manager is a state employee who provides administrative management for the district office.
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DATE: 3/18/2014

agencies, law enforcement, the state ombudsman, and legal advocate.²⁸ 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.

²⁸ 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

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.

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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

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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.

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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 ~~(6) (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+

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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.

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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.~~7~~

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

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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:

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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

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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;

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:

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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,

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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

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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

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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

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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

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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

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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.



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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 & Human Services
 2 Committee

3 Representative Roberson, K. offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 400.0060, Florida Statutes, is amended
 8 to read:

9 400.0060 Definitions.—When used in this part, unless the
 10 context clearly dictates otherwise, the term:

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

16 (2) "Agency" means the Agency for Health Care
 17 Administration.



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

19 (4) "District" means a geographical area designated by the
20 state ombudsman in which individuals certified as ombudsmen
21 carry out the duties of the state ombudsman program. A district
22 may have more than one local unit of ombudsmen. "Local council"
23 ~~means a local long term care ombudsman council designated by the~~
24 ~~ombudsman pursuant to s. 400.0069. Local councils are also known~~
25 ~~as district long term care ombudsman councils or district~~
26 ~~councils.~~

27 (5) "Long-term care facility" means a nursing home
28 facility, assisted living facility, adult family-care home,
29 board and care facility, facility in which continuing long-term
30 care is provided, or any other similar residential adult care
31 facility.

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

34 (7) "Ombudsman" means an individual who has been certified
35 by the state ombudsman as meeting the requirements of ss.
36 400.0069, 400.0070, and 400.0091 ~~the individual appointed by the~~
37 ~~Secretary of Elderly Affairs to head the Office of State Long-~~
38 ~~Term Care Ombudsman.~~

39 (8) "Representative of the office" means the state
40 ombudsman, an employee of the office, or an individual certified
41 as an ombudsman.

42 (9) ~~(8)~~ "Resident" means an individual 18 ~~60~~ years of age
43 or older who resides in a long-term care facility.



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44 (10)~~(9)~~ "Secretary" means the Secretary of Elderly
45 Affairs.

46 (11)~~(10)~~ "State council" means the State Long-Term Care
47 Ombudsman Council created by s. 400.0067.

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

51 (13) "State ombudsman program" means the program operating
52 under the direction of the office.

53 Section 2. Section 400.0061, Florida Statutes, is amended
54 to read:

55 400.0061 Legislative findings and intent; long-term care
56 facilities.-

57 (1) The Legislature finds that conditions in long-term
58 care facilities in this state are such that the rights, health,
59 safety, and welfare of residents are not fully ensured by rules
60 of the Department of Elderly Affairs or the Agency for Health
61 Care Administration or by the good faith of owners or operators
62 of long-term care facilities. Furthermore, there is a need for a
63 formal mechanism whereby a long-term care facility resident, a
64 representative of a long-term care facility resident, or any
65 other concerned citizen may make a complaint against the
66 facility or its employees, or against other persons who are in a
67 position to restrict, interfere with, or threaten the rights,
68 health, safety, or welfare of a long-term care facility
69 resident. The Legislature finds that concerned citizens are



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70 often more effective advocates for the rights of others than
71 governmental agencies. The Legislature further finds that in
72 order to be eligible to receive an allotment of funds authorized
73 and appropriated under the federal Older Americans Act, the
74 state must establish and operate an Office of State Long-Term
75 Care Ombudsman, to be headed by the state ~~Long-Term Care~~
76 ombudsman, and carry out a state long-term care ombudsman
77 program.

78 (2) It is the intent of the Legislature, therefore, to use
79 utilize voluntary citizen ombudsmen ~~ombudsman councils~~ under the
80 leadership of the state ombudsman, and, through them, to operate
81 a state an ombudsman program, which shall, without interference
82 by any executive agency, undertake to discover, investigate, and
83 determine the presence of conditions or individuals who ~~which~~
84 constitute a threat to the rights, health, safety, or welfare of
85 the residents of long-term care facilities. To ensure that the
86 effectiveness and efficiency of such investigations are not
87 impeded by advance notice or delay, the Legislature intends that
88 representatives of the office ~~ombudsman and ombudsman councils~~
89 ~~and their designated representatives~~ not be required to obtain
90 warrants in order to enter into or conduct investigations or
91 onsite administrative assessments of long-term care facilities.
92 It is the further intent of the Legislature that the environment
93 in long-term care facilities be conducive to the dignity and
94 independence of residents and that investigations by
95 representatives of the office ~~ombudsman councils~~ shall further

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96 the enforcement of laws, rules, and regulations that safeguard
97 the health, safety, and welfare of residents.

98 Section 3. Section 400.0063, Florida Statutes, is amended
99 to read:

100 400.0063 Establishment of Office of State Long-Term Care
101 Ombudsman; designation of ombudsman and legal advocate.—

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

104 (2) (a) The Office of State Long-Term Care Ombudsman shall
105 be headed by the state ~~Long-Term Care~~ ombudsman, who shall serve
106 on a full-time basis and shall personally, or through
107 representatives of the office, carry out the purposes and
108 functions of the state ombudsman program office in accordance
109 with state and federal law.

110 (b) The state ombudsman shall be appointed by and shall
111 serve at the pleasure of the Secretary of Elderly Affairs. The
112 secretary shall appoint a person who has expertise and
113 experience in the fields of long-term care and advocacy to serve
114 as state ombudsman.

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

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



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121 1. Assisting the state ombudsman in carrying out the
122 duties of the office with respect to the abuse, neglect,
123 exploitation, or violation of rights of residents of long-term
124 care facilities.

125 2. Assisting the state council and representatives of the
126 office ~~local councils~~ in carrying out their responsibilities
127 under this part.

128 3. Pursuing administrative, legal, and other appropriate
129 remedies on behalf of residents.

130 4. Serving as legal counsel to the state council and
131 representatives of the office ~~local councils, or individual~~
132 ~~members thereof~~, against whom any suit or other legal action
133 that is initiated in connection with the performance of the
134 official duties of the state ombudsman program ~~councils or an~~
135 ~~individual member~~.

136 Section 4. Section 400.0065, Florida Statutes, is amended
137 to read:

138 400.0065 Office of State Long-Term Care Ombudsman; duties
139 and responsibilities.-

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

142 (a) Identify, investigate, and resolve complaints made by
143 or on behalf of residents of long-term care facilities relating
144 to actions or omissions by providers or representatives of
145 providers of long-term care services, other public or private



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

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

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

153 (d) Ensure that residents have regular and timely access
154 to the services provided through the office and that residents
155 and complainants receive timely responses from representatives
156 of the office to their complaints.

157 (e) Represent the interests of residents before
158 governmental agencies and seek administrative, legal, and other
159 remedies to protect the health, safety, welfare, and rights of
160 the residents.

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

162 (g) Analyze, comment on, and monitor the development and
163 implementation of federal, state, and local laws, rules, and
164 regulations, and other governmental policies and actions, that
165 pertain to the health, safety, welfare, and rights of the
166 residents, with respect to the adequacy of long-term care
167 facilities and services in the state, and recommend any changes
168 in such laws, rules, regulations, policies, and actions as the
169 office determines to be appropriate and necessary.



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170 (h) Provide technical support for the development of
171 resident and family councils to protect the well-being and
172 rights of residents.

173 (2) The state ~~Long Term Care~~ ombudsman has ~~shall have~~ the
174 duty and authority to:

175 (a) Establish and coordinate districts ~~local councils~~
176 throughout the state.

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

179 (c) Within the limits of appropriated federal and state
180 funding, employ such personnel ~~as are~~ necessary to perform
181 adequately the functions of the office and provide or contract
182 for legal services to assist the state council and
183 representatives of the office ~~local councils~~ in the performance
184 of their duties. ~~Staff positions established for the purpose of~~
185 ~~coordinating the activities of each local council and assisting~~
186 ~~its members may be filled by the ombudsman after approval by the~~
187 ~~secretary. Notwithstanding any other provision of this part,~~
188 ~~upon certification by the ombudsman that the staff member hired~~
189 ~~to fill any such position has completed the initial training~~
190 ~~required under s. 400.0091, such person shall be considered a~~
191 ~~representative of the State Long Term Care Ombudsman Program for~~
192 ~~purposes of this part.~~

193 (d) Contract for services necessary to carry out the
194 activities of the office.



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195 (e) Apply for, receive, and accept grants, gifts, or other
196 payments, including, but not limited to, real property, personal
197 property, and services from a governmental entity or other
198 public or private entity or person, and make arrangements for
199 the use of such grants, gifts, or payments.

200 (f) Coordinate, to the greatest extent possible, state and
201 local ombudsman services with the protection and advocacy
202 systems for individuals with developmental disabilities and
203 mental illnesses and with legal assistance programs for the poor
204 through adoption of memoranda of understanding and other means.

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

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

211 (h) ~~(i)~~ Prepare an annual report describing the activities
212 carried out by the office, the state council, and the districts
213 ~~local councils~~ in the year for which the report is prepared. The
214 state ombudsman shall submit the report to the secretary, the
215 United States Assistant Secretary for Aging, the Governor, the
216 President of the Senate, the Speaker of the House of
217 Representatives, the Secretary of Children and Families, and the
218 Secretary of Health Care Administration at least 30 days before
219 the convening of the regular session of the Legislature. ~~The~~
220 ~~secretary shall in turn submit the report to the United States~~

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221 ~~Assistant Secretary for Aging, the Governor, the President of~~
222 ~~the Senate, the Speaker of the House of Representatives, the~~
223 ~~Secretary of Children and Family Services, and the Secretary of~~
224 ~~Health Care Administration.~~ The report must ~~shall~~, at a minimum:

225 1. Contain and analyze data collected concerning
226 complaints about and conditions in long-term care facilities and
227 the disposition of such complaints.

228 2. Evaluate the problems experienced by residents.

229 3. Analyze the successes of the state ombudsman program
230 during the preceding year, including an assessment of how
231 successfully the office ~~program~~ has carried out its
232 responsibilities under the Older Americans Act.

233 4. Provide recommendations for policy, regulatory, and
234 statutory changes designed to solve identified problems; resolve
235 residents' complaints; improve residents' lives and quality of
236 care; protect residents' rights, health, safety, and welfare;
237 and remove any barriers to the optimal operation of the state
238 ~~Long Term Care~~ ombudsman program.

239 5. Contain recommendations from the state ~~Long Term Care~~
240 ~~Ombudsman~~ council regarding program functions and activities and
241 recommendations for policy, regulatory, and statutory changes
242 designed to protect residents' rights, health, safety, and
243 welfare.

244 6. Contain any relevant recommendations from
245 representatives of the office ~~local councils~~ regarding program
246 functions and activities.



Amendment No.

247 Section 5. Section 400.0067, Florida Statutes, is amended
248 to read:

249 400.0067 State Long-Term Care Ombudsman Council; duties;
250 membership.-

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

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

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

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

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

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

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



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273 (f) Assist the state ombudsman in preparing the annual
274 report described in s. 400.0065.

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

280 (a) Each local unit in a district must select local
281 ~~council shall elect by majority vote a representative from among~~
282 ~~the council members to represent the interests of the local~~
283 ~~council of its choice to serve on the state council. A local~~
284 ~~council chair may not serve as the representative of the local~~
285 ~~council on the state council.~~

286 (b)1. The state ombudsman secretary, ~~after consulting with~~
287 ~~the ombudsman~~, shall submit to the secretary ~~Governor~~ a list of
288 individuals ~~persons~~ recommended for appointment to the at-large
289 positions on the state council. The list ~~may shall~~ not include
290 the name of any individual person who is currently serving in a
291 district on a local council.

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

294 3. If the secretary ~~Governor~~ does not appoint an at-large
295 member to fill a vacant position within 60 days after the list
296 is submitted, the state secretary, ~~after consulting with the~~
297 ~~ombudsman~~, shall appoint an at-large member to fill that vacant
298 position.



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

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

303 (b) 3. A district manager, in consultation with the
304 district ombudsmen, local council may recommend replacement
305 ~~removal~~ of its selected ombudsman ~~elected representative~~ from
306 the state council ~~by a majority vote~~. If the district manager,
307 in consultation with the district ombudsmen, selects a
308 replacement ombudsman, the district manager council votes to
309 ~~remove its representative, the local council chair~~ shall
310 ~~immediately~~ notify the state ombudsman. ~~The secretary shall~~
311 ~~advise the Governor of the local council's vote upon receiving~~
312 ~~notice from the ombudsman.~~

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

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

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

322 2. The chair shall select a vice chair from among the
323 members. The vice chair shall preside over the state council in
324 the absence of the chair.



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325 3. The chair may create additional executive positions as
326 necessary to carry out the duties of the state council. Any
327 person appointed to an executive position shall serve at the
328 pleasure of the chair, and his or her term shall expire on the
329 same day as the term of the chair.

330 4. A chair may be immediately removed from office before
331 ~~prior to~~ the expiration of his or her term by a vote of two-
332 thirds of all state council members present at any meeting at
333 which a quorum is present. If a chair is removed from office
334 before ~~prior to~~ the expiration of his or her term, a replacement
335 chair shall be chosen during the same meeting in the same manner
336 as described in this paragraph, and the term of the replacement
337 chair shall begin immediately. The replacement chair shall serve
338 for the remainder of the term and is eligible to serve two
339 subsequent consecutive terms.

340 (f)(e)1. The state council shall meet upon the call of the
341 chair or upon the call of the state ombudsman. The state council
342 shall meet at least quarterly but may meet more frequently as
343 needed.

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

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

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

354 Section 6. Section 400.0069, Florida Statutes, is amended
355 to read:

356 400.0069 ~~Local~~ Long-term care ombudsman districts
357 ~~councils~~; duties; appointment ~~membership~~.

358 (1) (a) The state ombudsman shall designate districts ~~local~~
359 ~~long term care ombudsman councils~~ to carry out the duties of the
360 state ~~Long Term Care~~ ombudsman program ~~within local communities~~.
361 Each district ~~local council~~ shall function under the direction
362 of the state ombudsman.

363 (b) The state ombudsman shall ensure that there are
364 representatives of the office ~~is at least one local council~~
365 operating in each district ~~of the department's planning and~~
366 ~~service areas. The ombudsman may create additional local~~
367 ~~councils~~ as necessary to ensure that residents throughout the
368 state have adequate access to state ~~Long Term Care~~ ombudsman
369 program services. ~~The ombudsman, after approval from the~~
370 ~~secretary, shall designate the jurisdictional boundaries of each~~
371 ~~local council~~.

372 (c) Each district must convene a public meeting every
373 quarter.

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



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

379 (b) Discover, investigate, and determine the existence of
380 abuse, or neglect, or exploitation using in any long term care
381 ~~facility and to use~~ the procedures provided for in ss. 415.101-
382 415.113 when applicable.

383 (c) Identify Elicit, receive, investigate, respond to, and
384 resolve complaints made by or on behalf of residents relating to
385 actions or omissions by providers or representatives of
386 providers of long-term care services, other public agencies,
387 guardians, or representative payees which may adversely affect
388 the health, safety, welfare, or rights of residents.

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

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

398 (f) Recommend that the state ombudsman and the legal
399 advocate seek administrative, legal, and other remedies to
400 protect the health, safety, welfare, and rights of ~~the~~
401 residents.



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

404 (h)(g) Carry out other activities that the state ombudsman
405 determines to be appropriate.

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

412 (4) Each district local council shall be composed of
413 ombudsmen ~~members~~ whose primary residences are ~~residence is~~
414 located within the boundaries of the district local council's
415 jurisdiction.

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

420 ~~1. At least one medical or osteopathic physician whose~~
421 ~~practice includes or has included a substantial number of~~
422 ~~geriatric patients and who may practice in a long term care~~
423 ~~facility;~~

424 ~~2. At least one registered nurse who has geriatric~~
425 ~~experience;~~

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

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



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428 ~~5. At least six nursing home residents or representative~~
429 ~~consumer advocates for nursing home residents;~~

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

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

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

435 (b) The following individuals may not be appointed as
436 ombudsmen:

437 1. The owner or representative of a long-term care
438 facility.

439 2. A provider or representative of a provider of long-term
440 care service.

441 3. An employee of the agency.

442 4. An employee of the department, except for a
443 representative of the office.

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

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

446 ~~In no case shall the medical director of a long term care~~
447 ~~facility or an employee of the agency, the department, the~~
448 ~~Department of Children and Family Services, or the Agency for~~
449 ~~Persons with Disabilities serve as a member or as an ex officio~~
450 ~~member of a council.~~

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



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453 1. Individuals wishing to join a local council shall
454 submit an application to the state ombudsman or his or her
455 designee.

456 2. Successfully complete level 2 background screening
457 pursuant to s. 430.0402 and chapter 435 ~~The ombudsman shall~~
458 ~~review the individual's application and advise the secretary of~~
459 ~~his or her recommendation for approval or disapproval of the~~
460 ~~candidate's membership on the local council. If the secretary~~
461 ~~approves of the individual's membership, the individual shall be~~
462 ~~appointed as a member of the local council.~~

463 (b) The state ombudsman shall approve or deny the
464 appointment of the individual as an ombudsman ~~The secretary may~~
465 ~~rescind the ombudsman's approval of a member on a local council~~
466 ~~at any time. If the secretary rescinds the approval of a member~~
467 ~~on a local council, the ombudsman shall ensure that the~~
468 ~~individual is immediately removed from the local council on~~
469 ~~which he or she serves and the individual may no longer~~
470 ~~represent the State Long Term Care Ombudsman Program until the~~
471 ~~secretary provides his or her approval.~~

472 (c) Upon appointment as an ombudsman, the individual may
473 participate in district activities but may not represent the
474 office or conduct any authorized program duties until the
475 individual has completed the initial training specified in s.
476 400.0091(1) and has been certified by the state ombudsman.

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



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479 policies and procedures established by the office, or
480 demonstrated inability to carry out the responsibilities of the
481 office, may rescind the appointment of an individual as an
482 ombudsman. After the appointment is rescinded, the individual
483 may not conduct any duties as an ombudsman and may not represent
484 the office or the state ombudsman program ~~A local council may~~
485 ~~recommend the removal of one or more of its members by~~
486 ~~submitting to the ombudsman a resolution adopted by a two-thirds~~
487 ~~vote of the members of the council stating the name of the~~
488 ~~member or members recommended for removal and the reasons for~~
489 ~~the recommendation. If such a recommendation is adopted by a~~
490 ~~local council, the local council chair or district coordinator~~
491 ~~shall immediately report the council's recommendation to the~~
492 ~~ombudsman. The ombudsman shall review the recommendation of the~~
493 ~~local council and advise the secretary of his or her~~
494 ~~recommendation regarding removal of the council member or~~
495 ~~members.~~

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

499 ~~(b) The chair shall select a vice chair from among the~~
500 ~~members of the council. The vice chair shall preside over the~~
501 ~~council in the absence of the chair.~~

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



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

507 ~~(d) A chair may be immediately removed from office prior~~
508 ~~to the expiration of his or her term by a vote of two thirds of~~
509 ~~the members of the local council. If any chair is removed from~~
510 ~~office prior to the expiration of his or her term, a replacement~~
511 ~~chair shall be elected during the same meeting, and the term of~~
512 ~~the replacement chair shall begin immediately. The replacement~~
513 ~~chair shall serve for the remainder of the term of the person he~~
514 ~~or she replaced.~~

515 ~~(7) Each local council shall meet upon the call of its~~
516 ~~chair or upon the call of the ombudsman. Each local council~~
517 ~~shall meet at least once a month but may meet more frequently if~~
518 ~~necessary.~~

519 ~~(6)(8) An ombudsman may not~~ An ombudsman may not ~~A member of a local council~~
520 ~~shall receive no compensation but shall, with approval from the~~
521 ~~state ombudsman, be reimbursed for travel expenses both within~~
522 ~~and outside the jurisdiction of the local council in accordance~~
523 ~~with the provisions of s. 112.061.~~

524 ~~(7)(9) A representative of the office may~~ The local
525 ~~councils are authorized to call upon appropriate state agencies~~
526 ~~of state government for such professional assistance as may be~~
527 ~~needed in the discharge of his or her their duties, and such-~~
528 ~~All state agencies shall cooperate with the local councils in~~
529 ~~providing requested information and agency representation at~~
530 ~~council meetings.~~



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531 Section 7. Section 400.0070, Florida Statutes, is amended
532 to read:

533 400.0070 Conflicts of interest.-

534 (1) A representative of the office may ~~The ombudsman shall~~
535 not:

536 (a) Have a direct involvement in the licensing or
537 certification of, or an ownership or investment interest in, a
538 long-term care facility or a provider of a long-term care
539 service.

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

542 (c) Receive, or have a right to receive, directly or
543 indirectly, remuneration, in cash or in kind, under a
544 compensation agreement with the owner or operator of a long-term
545 care facility.

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

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

551 (a) Situations that constitute an individual ~~a person~~
552 having a conflict of interest which ~~that~~ could materially affect
553 the objectivity or capacity of the individual ~~a person~~ to serve
554 as a representative on an ombudsman council, ~~or as an employee~~
555 of the office, ~~while carrying out the purposes of the State~~
556 ~~Long Term Care Ombudsman Program as specified in this part.~~



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

560 Section 8. Section 400.0071, Florida Statutes, is amended
561 to read:

562 400.0071 State ~~Long Term Care~~ ombudsman program complaint
563 procedures.—The department, in consultation with the state
564 ombudsman, shall adopt rules implementing state and local
565 complaint procedures. The rules must include procedures for
566 receiving, investigating, identifying, and resolving complaints
567 concerning the health, safety, welfare, and rights of residents.

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

570 ~~(2) Conducting investigations of a long term care facility~~
571 ~~or an employee of a long term care facility subsequent to~~
572 ~~receiving a complaint.~~

573 ~~(3) Conducting onsite administrative assessments of long-~~
574 ~~term care facilities.~~

575 Section 9. Section 400.0073, Florida Statutes, is amended
576 to read:

577 400.0073 Complaint ~~State and local ombudsman council~~
578 investigations.—

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



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583 ~~source based on an action or omission by an administrator, an~~
584 ~~employee, or a representative of a long term care facility which~~
585 might be:

- 586 (a) Contrary to law;
- 587 (b) Unreasonable, unfair, oppressive, or unnecessarily
588 discriminatory, even though in accordance with law;
- 589 (c) Based on a mistake of fact;
- 590 (d) Based on improper or irrelevant grounds;
- 591 (e) Unaccompanied by an adequate statement of reasons;
- 592 (f) Performed in an inefficient manner; or
- 593 (g) Otherwise adversely affecting the health, safety,
594 welfare, or rights of a resident.

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

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

600 (2)(4) If a representative of the office ~~the ombudsman or~~
601 ~~any state or local council member~~ is not allowed to enter a
602 long-term care facility, the administrator of the facility shall
603 be considered to have interfered with a representative of the
604 office, ~~the state council, or the local council~~ in the
605 performance of official duties as described in s. 400.0083(1)
606 and to have violated ~~committed a violation of~~ this part. The
607 representative of the office ~~ombudsman~~ shall report a facility's
608 refusal to allow entry to the facility to the state ombudsman or



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609 his or her designee, who shall report the incident to the
610 agency, and the agency shall record the report and take it into
611 consideration when determining actions allowable under s.
612 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
613 429.71.

614 Section 10. Section 400.0074, Florida Statutes, is amended
615 to read:

616 400.0074 ~~Local ombudsman council~~ Onsite administrative
617 assessments.-

618 (1) A representative of the office shall ~~In addition to~~
619 ~~any specific investigation conducted pursuant to a complaint,~~
620 ~~the local council shall~~ conduct, at least annually, an onsite
621 administrative assessment of each nursing home, assisted living
622 facility, and adult family-care home ~~within its jurisdiction.~~
623 This administrative assessment must be resident-centered and
624 must shall focus on factors affecting the rights, health,
625 safety, and welfare of the residents. ~~Each local council is~~
626 ~~encouraged to conduct a similar onsite administrative assessment~~
627 ~~of each additional long term care facility within its~~
628 ~~jurisdiction.~~

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

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



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

636 (b) An administrative assessment shall be conducted at a
637 time and for a duration necessary to produce the information
638 required to complete the assessment ~~carry out the duties of the~~
639 ~~local council.~~

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

643 (d) A representative of the office ~~local council member~~
644 ~~physically~~ present for the administrative assessment must shall
645 identify himself or herself to the administrator ~~and cite the~~
646 ~~specific statutory authority for his or her assessment of the~~
647 ~~facility or his or her designee.~~

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

650 (f) A representative of the office ~~local council member~~
651 may not enter a single-family residential unit within a long-
652 term care facility during an administrative assessment without
653 the permission of the resident or the representative of the
654 resident.

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

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



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660 ~~local council to perform the administrative assessments~~
661 ~~described in this section.~~

662 (4) An onsite administrative assessment may not be
663 accomplished by forcible entry. However, if a representative of
664 the office ombudsman or a state or local council member is not
665 allowed to enter a long-term care facility, the administrator of
666 the facility shall be considered to have interfered with a
667 representative of the office, ~~the state council, or the local~~
668 ~~council~~ in the performance of official duties as described in s.
669 400.0083(1) and to have committed a violation of this part. The
670 representative of the office ombudsman shall report the refusal
671 by a facility to allow entry to the state ombudsman or his or
672 her designee, who shall then report the incident to the agency,
673 and the agency shall record the report and take it into
674 consideration when determining actions allowable under s.
675 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
676 429.71.

677 (4) The department, in consultation with the state
678 ombudsman, may adopt rules implementing procedures for
679 conducting onsite administrative assessments of long-term care
680 facilities.

681 Section 11. Section 400.0075, Florida Statutes, is amended
682 to read:

683 400.0075 Complaint notification and resolution
684 procedures.-



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685 (1) (a) Any complaint ~~or problem~~ verified by a
686 representative of the office an ombudsman council as a result of
687 an investigation may or onsite administrative assessment, which
688 ~~complaint or problem is determined to require remedial action by~~
689 ~~the local council,~~ shall be identified and brought to the
690 attention of the long-term care facility administrator subject
691 to the confidentiality provisions of s. 400.0077 in writing.
692 Upon receipt of the information such document, the
693 administrator, with the concurrence of the representative of the
694 office local council chair, shall establish target dates for
695 taking appropriate remedial action. If, by the target date, the
696 remedial action is not completed or forthcoming, the
697 representative may extend the target date if there is reason to
698 believe such action would facilitate the resolution of the
699 complaint, or the representative may refer the complaint to the
700 district manager local council chair may, after obtaining
701 ~~approval from the ombudsman and a majority of the members of the~~
702 ~~local council.~~

703 1. ~~Extend the target date if the chair has reason to~~
704 ~~believe such action would facilitate the resolution of the~~
705 ~~complaint.~~

706 2. ~~In accordance with s. 400.0077, publicize the~~
707 ~~complaint, the recommendations of the council, and the response~~
708 ~~of the long term care facility.~~

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

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710 (b) If an ombudsman determines the local council chair
711 ~~believes~~ that the health, safety, welfare, or rights of a the
712 resident are in imminent danger, the ombudsman must immediately
713 notify the district manager. The district manager chair shall
714 ~~notify the ombudsman or legal advocate, who~~, after verifying
715 that such imminent danger exists, must notify the appropriate
716 state agencies, including law enforcement agencies, the state
717 ombudsman, and the legal advocate to ensure the protection of
718 ~~shall seek immediate legal or administrative remedies to protect~~
719 the resident.

720 (c) If the state ombudsman or legal advocate has reason to
721 believe that the long-term care facility or an employee of the
722 facility has committed a criminal act, the state ombudsman or
723 legal advocate shall provide the local law enforcement agency
724 with the relevant information to initiate an investigation of
725 the case.

726 (2) ~~(a)~~ Upon referral from a district local council, the
727 state ombudsman or his or her designee council shall assume the
728 responsibility for the disposition of the complaint. If a long-
729 term care facility fails to take action to resolve or remedy the
730 ~~on a complaint by the state council~~, the state ombudsman council
731 ~~may, after obtaining approval from the ombudsman and a majority~~
732 ~~of the state council members:~~

733 (a) ~~1.~~ In accordance with s. 400.0077, publicize the
734 complaint, the recommendations of the representatives of the



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735 ~~office local or state council~~, and the response of the long-term
736 care facility.

737 ~~(b)2-~~ Recommend to the department and the agency a series
738 of facility reviews pursuant to s. 400.19, s. 429.34, or s.
739 429.67 to ensure correction and nonrecurrence of the conditions
740 that ~~gave give~~ rise to the complaint ~~complaints~~ against the a
741 long-term care facility.

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

745 ~~(d)4-~~ Recommend to the department and the agency that
746 procedures be initiated for action against ~~revocation~~ of the
747 long-term care facility's license in accordance with chapter
748 120.

749 ~~(b) If the state council chair believes that the health,~~
750 ~~safety, welfare, or rights of the resident are in imminent~~
751 ~~danger, the chair shall notify the ombudsman or legal advocate,~~
752 ~~who, after verifying that such imminent danger exists, shall~~
753 ~~seek immediate legal or administrative remedies to protect the~~
754 ~~resident.~~

755 ~~(3)(e)~~ If the state ombudsman, after consultation with the
756 legal advocate, has reason to believe that the long-term care
757 facility or an employee of the facility has committed a criminal
758 act, the office ombudsman shall provide the local law
759 enforcement agency with the relevant information to initiate an
760 investigation of the case.



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761 Section 12. Section 400.0078, Florida Statutes, is amended
762 to read:

763 400.0078 Citizen access to state ~~Long-Term-Care~~ ombudsman
764 program services.-

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

769 (2) ~~Every resident or representative of a resident shall~~
770 ~~receive,~~ Upon admission to a long-term care facility, each
771 resident or representative of a resident must receive
772 information regarding:

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

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

777 (c) Information that retaliatory action cannot be taken
778 against a resident for presenting grievances or for exercising
779 any other resident rights.

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

782
783 Residents or their representatives must be furnished additional
784 copies of this information upon request.

785 Section 13. Section 400.0079, Florida Statutes, is amended
786 to read:



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787 400.0079 Immunity.—

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

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

798 Section 14. Section 400.0081, Florida Statutes, is amended
799 to read:

800 400.0081 Access to facilities, residents, and records.—

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

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

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

810 1. The representative of the office has the permission of
811 the resident or the legal representative of the resident; or



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

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

816 1. A legal representative or guardian of the resident
817 refuses to give permission;

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

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

823 (d) Access to the administrative records, policies, and
824 documents to which residents or the general public has ~~have~~
825 access.

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

829 (2) The department, in consultation with the state
830 ombudsman ~~and the state council~~, may adopt rules to establish
831 procedures to ensure access to facilities, residents, and
832 records as described in this section.

833 Section 15. Section 400.0083, Florida Statutes, is amended
834 to read:

835 400.0083 Interference; retaliation; penalties.—

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



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

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

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

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

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

852 Section 16. Section 400.0087, Florida Statutes, is amended
853 to read:

854 400.0087 Department oversight; funding.—

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

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

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



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864 cost ratio to cover the costs associated with administering the
865 state ombudsman program. The remaining allotment from the Older
866 Americans Act program shall be expended on direct ombudsman
867 activities.

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

871 (3) The department is responsible for ensuring that the
872 office:

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

875 (b) Provides information to public and private agencies,
876 legislators, and others.

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

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

883 (4) The department shall also:

884 (a) Receive and disburse state and federal funds for
885 purposes that the state ombudsman has formulated in accordance
886 with the Older Americans Act.

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

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890 Section 17. Section 400.0089, Florida Statutes, is amended
891 to read:

892 400.0089 Complaint data reports.—The office shall maintain
893 a statewide uniform reporting system to collect and analyze data
894 relating to complaints and conditions in long-term care
895 facilities and to residents for the purpose of identifying and
896 resolving ~~significant~~ complaints ~~problems~~. The office shall
897 publish quarterly and make readily available information
898 pertaining to the number and types of complaints received by the
899 state ~~Long Term Care~~ ombudsman program and shall include such
900 information in the annual report required under s. 400.0065.

901 Section 18. Section 400.0091, Florida Statutes, is amended
902 to read:

903 400.0091 Training.—The state ombudsman shall ensure that
904 appropriate training is provided to all representatives
905 ~~employees~~ of the office ~~and to the members of the state and~~
906 ~~local councils~~.

907 (1) All representatives ~~state and local council members~~
908 ~~and employees~~ of the office shall be given a minimum of 20 hours
909 of training upon employment with the office or appointment as an
910 ombudsman. ~~Ten approval as a state or local council member and~~
911 ~~10~~ hours of continuing education is required annually
912 thereafter.

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



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- 916 (a) Resident confidentiality.
- 917 (b) Guardianships and powers of attorney.
- 918 (c) Medication administration.
- 919 (d) Care and medication of residents with dementia and
920 Alzheimer's disease.
- 921 (e) Accounting for residents' funds.
- 922 (f) Discharge rights and responsibilities.
- 923 (g) Cultural sensitivity.
- 924 (h) Any other topic related to residency within a long-
925 term care facility recommended by the secretary.
- 926 (3) An individual ~~No employee, officer, or representative~~
927 ~~of the office or of the state or local councils~~, other than the
928 state ombudsman, may not hold himself or herself out as a
929 representative of the office ~~State Long Term Care Ombudsman~~
930 ~~Program~~ or conduct any authorized program duty described in this
931 part unless the individual ~~person~~ has received the training
932 required by this section and has been certified by the state
933 ombudsman as qualified to carry out ombudsman activities on
934 behalf of the office ~~or the state or local councils~~.
- 935 Section 19. Subsection (4) of section 20.41, Florida
936 Statutes, is amended to read:
- 937 20.41 Department of Elderly Affairs.—There is created a
938 Department of Elderly Affairs.
- 939 (4) The department shall administer the Office of State
940 Long-Term Care Ombudsman Council, created by s. 400.0063
941 ~~400.0067, and the local long term care ombudsman councils,~~

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942 ~~created by s. 400.0069~~ and shall, as required by s. 712 of the
943 federal Older Americans Act of 1965, ensure that ~~both~~ the state
944 office operates and ~~local long term care ombudsman councils~~
945 ~~operate~~ in compliance with the Older Americans Act.

946 Section 20. Subsections (10) through (19) of section
947 400.021, Florida Statutes, are amended to read:

948 400.021 Definitions.—When used in this part, unless the
949 context otherwise requires, the term:

950 ~~(10)~~ ~~"Local ombudsman council"~~ means a ~~local long term~~
951 ~~care ombudsman council established pursuant to s. 400.0069,~~
952 ~~located within the Older Americans Act planning and service~~
953 ~~areas.~~

954 ~~(10)~~ ~~(11)~~ "Nursing home bed" means an accommodation which
955 is ready for immediate occupancy, or is capable of being made
956 ready for occupancy within 48 hours, excluding provision of
957 staffing; and which conforms to minimum space requirements,
958 including the availability of appropriate equipment and
959 furnishings within the 48 hours, as specified by rule of the
960 agency, for the provision of services specified in this part to
961 a single resident.

962 ~~(11)~~ ~~(12)~~ "Nursing home facility" means any facility which
963 provides nursing services as defined in part I of chapter 464
964 and which is licensed according to this part.

965 ~~(12)~~ ~~(13)~~ "Nursing service" means such services or acts as
966 may be rendered, directly or indirectly, to and in behalf of a
967 person by individuals as defined in s. 464.003.

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968 (13) "Office" has the same meaning as in s. 400.0060.

969 (14) "Planning and service area" means the geographic area
970 in which the Older Americans Act programs are administered and
971 services are delivered by the Department of Elderly Affairs.

972 (15) "Representative of the office" has the same meaning
973 as in s. 400.0060.

974 (16)~~(15)~~ "Respite care" means admission to a nursing home
975 for the purpose of providing a short period of rest or relief or
976 emergency alternative care for the primary caregiver of an
977 individual receiving care at home who, without home-based care,
978 would otherwise require institutional care.

979 (17)~~(16)~~ "Resident care plan" means a written plan
980 developed, maintained, and reviewed not less than quarterly by a
981 registered nurse, with participation from other facility staff
982 and the resident or his or her designee or legal representative,
983 which includes a comprehensive assessment of the needs of an
984 individual resident; the type and frequency of services required
985 to provide the necessary care for the resident to attain or
986 maintain the highest practicable physical, mental, and
987 psychosocial well-being; a listing of services provided within
988 or outside the facility to meet those needs; and an explanation
989 of service goals.

990 (18)~~(17)~~ "Resident designee" means a person, other than
991 the owner, administrator, or employee of the facility,
992 designated in writing by a resident or a resident's guardian, if



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993 the resident is adjudicated incompetent, to be the resident's
994 representative for a specific, limited purpose.

995 ~~(19)(18)~~ "State ombudsman program council" has the same
996 meaning as in s. 400.0060 means the State Long Term Care
997 Ombudsman Council established pursuant to s. 400.0067.

998 ~~(20)(19)~~ "Therapeutic spa services" means bathing, nail,
999 and hair care services and other similar services related to
1000 personal hygiene.

1001 Section 21. Paragraph (c) of subsection (1) and
1002 subsections (2) and (3) of section 400.022, Florida Statutes,
1003 are amended to read:

1004 400.022 Residents' rights.—

1005 (1) All licensees of nursing home facilities shall adopt
1006 and make public a statement of the rights and responsibilities
1007 of the residents of such facilities and shall treat such
1008 residents in accordance with the provisions of that statement.
1009 The statement shall assure each resident the following:

1010 (c) Any entity or individual that provides health, social,
1011 legal, or other services to a resident has the right to have
1012 reasonable access to the resident. The resident has the right to
1013 deny or withdraw consent to access at any time by any entity or
1014 individual. Notwithstanding the visiting policy of the facility,
1015 the following individuals must be permitted immediate access to
1016 the resident:

1017 1. Any representative of the federal or state government,
1018 including, but not limited to, representatives of the Department



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1019 of Children and Families ~~Family Services~~, the Department of
1020 Health, the Agency for Health Care Administration, the Office of
1021 the Attorney General, and the Department of Elderly Affairs; any
1022 law enforcement officer; any representative members of the
1023 office ~~state or local ombudsman council~~; and the resident's
1024 individual physician.

1025 2. Subject to the resident's right to deny or withdraw
1026 consent, immediate family or other relatives of the resident.

1027

1028 The facility must allow representatives of the office ~~state~~
1029 ~~Long Term Care ombudsman Council~~ to examine a resident's
1030 clinical records with the permission of the resident or the
1031 resident's legal representative and consistent with state law.

1032 (2) The licensee for each nursing home shall orally inform
1033 the resident of the resident's rights and provide a copy of the
1034 statement required by subsection (1) to each resident or the
1035 resident's legal representative at or before the resident's
1036 admission to a facility. The licensee shall provide a copy of
1037 the resident's rights to each staff member of the facility. Each
1038 such licensee shall prepare a written plan and provide
1039 appropriate staff training to implement ~~the provisions of this~~
1040 section. The written statement of rights must include a
1041 statement that a resident may file a complaint with the agency
1042 or state ~~local~~ ombudsman program ~~council~~. The statement must be
1043 in boldfaced type and ~~shall~~ include the ~~name, address, and~~
1044 telephone number and e-mail address of the state ~~numbers of the~~



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1045 ~~local~~ ombudsman program council and the telephone number of the
1046 central abuse hotline where complaints may be lodged.

1047 (3) Any violation of the resident's rights set forth in
1048 this section constitutes ~~shall constitute~~ grounds for action by
1049 the agency under ~~the provisions of~~ s. 400.102, s. 400.121, or
1050 part II of chapter 408. In order to determine whether the
1051 licensee is adequately protecting residents' rights, the
1052 licensure inspection of the facility must ~~shall~~ include private
1053 informal conversations with a sample of residents to discuss
1054 residents' experiences within the facility with respect to
1055 rights specified in this section and general compliance with
1056 standards, and consultation with the state ombudsman program
1057 ~~council in the local planning and service area of the Department~~
1058 ~~of Elderly Affairs in which the nursing home is located.~~

1059 Section 22. Subsections (8), (9), and (11) through (14) of
1060 section 400.0255, Florida Statutes, are amended to read:

1061 400.0255 Resident transfer or discharge; requirements and
1062 procedures; hearings.-

1063 (8) The notice required by subsection (7) must be in
1064 writing and must contain all information required by state and
1065 federal law, rules, or regulations applicable to Medicaid or
1066 Medicare cases. The agency shall develop a standard document to
1067 be used by all facilities licensed under this part for purposes
1068 of notifying residents of a discharge or transfer. Such document
1069 must include a means for a resident to request the office local
1070 ~~long term care ombudsman council~~ to review the notice and



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1071 request information about or assistance with initiating a fair
1072 hearing with the department's Office of Appeals Hearings. In
1073 addition to any other pertinent information included, the form
1074 shall specify the reason allowed under federal or state law that
1075 the resident is being discharged or transferred, with an
1076 explanation to support this action. Further, the form must ~~shall~~
1077 state the effective date of the discharge or transfer and the
1078 location to which the resident is being discharged or
1079 transferred. The form must ~~shall~~ clearly describe the resident's
1080 appeal rights and the procedures for filing an appeal, including
1081 the right to request the office local ombudsman council to
1082 review the notice of discharge or transfer. A copy of the notice
1083 must be placed in the resident's clinical record, and a copy
1084 must be transmitted to the resident's legal guardian or
1085 representative and to the office local ombudsman council within
1086 5 business days after signature by the resident or resident
1087 designee.

1088 (9) A resident may request that the office local ombudsman
1089 ~~council~~ review any notice of discharge or transfer given to the
1090 resident. When requested by a resident to review a notice of
1091 discharge or transfer, the office local ombudsman council shall
1092 do so within 7 days after receipt of the request. The nursing
1093 home administrator, or the administrator's designee, must
1094 forward the request for review contained in the notice to the
1095 office local ombudsman council within 24 hours after such
1096 request is submitted. Failure to forward the request within 24

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1097 hours after the request is submitted shall toll the running of
1098 the 30-day advance notice period until the request has been
1099 forwarded.

1100 (11) Notwithstanding paragraph (10)(b), an emergency
1101 discharge or transfer may be implemented as necessary pursuant
1102 to state or federal law during the ~~period of~~ time after the
1103 notice is given and before the time a hearing decision is
1104 rendered. Notice of an emergency discharge or transfer to the
1105 resident, the resident's legal guardian or representative, and
1106 the office ~~local ombudsman council~~ if requested pursuant to
1107 subsection (9) must be by telephone or in person. This notice
1108 shall be given before the transfer, if possible, or as soon
1109 thereafter as practicable. A representative of the office ~~local~~
1110 ~~ombudsman council~~ conducting a review under this subsection
1111 shall do so within 24 hours after receipt of the request. The
1112 resident's file must be documented to show who was contacted,
1113 whether the contact was by telephone or in person, and the date
1114 and time of the contact. If the notice is not given in writing,
1115 written notice meeting the requirements of subsection (8) must
1116 be given the next working day.

1117 (12) After receipt of any notice required under this
1118 section, the office ~~local ombudsman council~~ may request a
1119 private informal conversation with a resident to whom the notice
1120 is directed, and, if known, a family member or the resident's
1121 legal guardian or designee, to ensure that the facility is
1122 proceeding with the discharge or transfer in accordance with ~~the~~



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1123 ~~requirements~~ of this section. If requested, the office local
1124 ~~ombudsman council~~ shall assist the resident with filing an
1125 appeal of the proposed discharge or transfer.

1126 (13) The following persons must be present at all hearings
1127 authorized under this section:

1128 (a) The resident, or the resident's legal representative
1129 or designee.

1130 (b) The facility administrator, or the facility's legal
1131 representative or designee.

1132

1133 A representative of the office local long term care ombudsman
1134 ~~council~~ may be present at all hearings authorized by this
1135 section.

1136 (14) In any hearing under this section, the following
1137 information concerning the parties shall be confidential and
1138 exempt from ~~the provisions of~~ s. 119.07(1):

1139 (a) Names and addresses.

1140 (b) Medical services provided.

1141 (c) Social and economic conditions or circumstances.

1142 (d) Evaluation of personal information.

1143 (e) Medical data, including diagnosis and past history of
1144 disease or disability.

1145 (f) Any information received verifying income eligibility
1146 and amount of medical assistance payments. Income information
1147 received from the Social Security Administration or the Internal



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1148 Revenue Service must be safeguarded according to the
1149 requirements of the agency that furnished the data.

1150
1151 The exemption created by this subsection does not prohibit
1152 access to such information by a representative of the office
1153 ~~local long term care ombudsman council~~ upon request, by a
1154 reviewing court if such information is required to be part of
1155 the record upon subsequent review, or as specified in s. 24(a),
1156 Art. I of the State Constitution.

1157 Section 23. Subsection (2) of section 400.1413, Florida
1158 Statutes, is amended to read:

1159 400.1413 Volunteers in nursing homes.—

1160 (2) This section does not affect the activities of the
1161 ~~state or local long term care ombudsman program councils~~
1162 authorized under part I.

1163 Section 24. Paragraph (d) of subsection (5) of section
1164 400.162, Florida Statutes, is amended to read:

1165 400.162 Property and personal affairs of residents.—

1166 (5)

1167 (d) If, at any time during the period for which a license
1168 is issued, a licensee that has not purchased a surety bond or
1169 entered into a self-insurance agreement, as provided in
1170 paragraphs (b) and (c), is requested to provide safekeeping for
1171 the personal funds of a resident, the licensee shall notify the
1172 agency of the request and make application for a surety bond or
1173 for participation in a self-insurance agreement within 7 days



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1174 after ~~of~~ the request, exclusive of weekends and holidays. Copies
1175 of the application, along with written documentation of related
1176 correspondence with an insurance agency or group, shall be
1177 maintained by the licensee for review by the agency and the
1178 office ~~state Nursing Home and Long Term Care Facility ombudsman~~
1179 ~~Council~~.

1180 Section 25. Subsections (1) and (4) of section 400.19,
1181 Florida Statutes, are amended to read:

1182 400.19 Right of entry and inspection.—

1183 (1) In accordance with part II of chapter 408, the agency
1184 and any duly designated officer or employee thereof or a
1185 representative member of the office ~~state Long Term Care~~
1186 ~~ombudsman Council or the local long term care ombudsman council~~
1187 shall have the right to enter upon and into the premises of any
1188 facility licensed pursuant to this part, or any distinct nursing
1189 home unit of a hospital licensed under chapter 395 or any
1190 freestanding facility licensed under chapter 395 which ~~that~~
1191 provides extended care or other long-term care services, at any
1192 reasonable time in order to determine the state of compliance
1193 with ~~the provisions of~~ this part, part II of chapter 408, and
1194 applicable rules in force pursuant thereto. The agency shall,
1195 within 60 days after receipt of a complaint made by a resident
1196 or resident's representative, complete its investigation and
1197 provide to the complainant its findings and resolution.

1198 (4) The agency shall conduct unannounced onsite facility
1199 reviews following written verification of licensee noncompliance

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1200 in instances in which the office ~~a long term care ombudsman~~
1201 ~~council~~, pursuant to ss. 400.0071 and 400.0075, has received a
1202 complaint and has documented deficiencies in resident care or in
1203 the physical plant of the facility that threaten the health,
1204 safety, or security of residents, or when the agency documents
1205 through inspection that conditions in a facility present a
1206 direct or indirect threat to the health, safety, or security of
1207 residents. However, the agency shall conduct unannounced onsite
1208 reviews every 3 months of each facility while the facility has a
1209 conditional license. Deficiencies related to physical plant do
1210 not require followup reviews after the agency has determined
1211 that correction of the deficiency has been accomplished and that
1212 the correction is of the nature that continued compliance can be
1213 reasonably expected.

1214 Section 26. Subsection (1) of section 400.191, Florida
1215 Statutes, is amended to read:

1216 400.191 Availability, distribution, and posting of reports
1217 and records.—

1218 (1) The agency shall provide information to the public
1219 about all of the licensed nursing home facilities operating in
1220 the state. The agency shall, within 60 days after a licensure
1221 inspection visit or within 30 days after any interim visit to a
1222 facility, send copies of the inspection reports to the office
1223 ~~local long term care ombudsman council~~, the agency's local
1224 office, and a public library or the county seat for the county
1225 in which the facility is located. The agency may provide



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1226 | electronic access to inspection reports as a substitute for
1227 | sending copies.

1228 | Section 27. Subsection (6) and paragraph (c) of subsection
1229 | (7) of section 400.23, Florida Statutes, are amended to read:

1230 | 400.23 Rules; evaluation and deficiencies; licensure
1231 | status.—

1232 | (6) Before ~~Prior to~~ conducting a survey of the facility,
1233 | the survey team shall obtain a copy of the office's local long-
1234 | ~~term care ombudsman council~~ report on the facility. Problems
1235 | noted in the report shall be incorporated into and followed up
1236 | through the agency's inspection process. This procedure does not
1237 | preclude the office local long-term care ombudsman council from
1238 | requesting the agency to conduct a followup visit to the
1239 | facility.

1240 | (7) The agency shall, at least every 15 months, evaluate
1241 | all nursing home facilities and make a determination as to the
1242 | degree of compliance by each licensee with the established rules
1243 | adopted under this part as a basis for assigning a licensure
1244 | status to that facility. The agency shall base its evaluation on
1245 | the most recent inspection report, taking into consideration
1246 | findings from other official reports, surveys, interviews,
1247 | investigations, and inspections. In addition to license
1248 | categories authorized under part II of chapter 408, the agency
1249 | shall assign a licensure status of standard or conditional to
1250 | each nursing home.



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1251 (c) In evaluating the overall quality of care and services
1252 and determining whether the facility will receive a conditional
1253 or standard license, the agency shall consider the needs and
1254 limitations of residents in the facility and the results of
1255 interviews and surveys of a representative sampling of
1256 residents, families of residents, representatives of the office
1257 ~~ombudsman council members in the planning and service area in~~
1258 ~~which the facility is located~~, guardians of residents, and staff
1259 of the nursing home facility.

1260 Section 28. Paragraph (a) of subsection (3), paragraph (f)
1261 of subsection (5), and subsection (6) of section 400.235,
1262 Florida Statutes, are amended to read:

1263 400.235 Nursing home quality and licensure status; Gold
1264 Seal Program.—

1265 (3) (a) The Gold Seal Program shall be developed and
1266 implemented by the Governor's Panel on Excellence in Long-Term
1267 Care which shall operate under the authority of the Executive
1268 Office of the Governor. The panel shall be composed of three
1269 persons appointed by the Governor, to include a consumer
1270 advocate for senior citizens and two persons with expertise in
1271 the fields of quality management, service delivery excellence,
1272 or public sector accountability; three persons appointed by the
1273 Secretary of Elderly Affairs, to include an active member of a
1274 nursing facility family and resident care council and a member
1275 of the University Consortium on Aging; a representative of the
1276 Office of State Long-Term Care Ombudsman; one person appointed



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1277 by the Florida Life Care Residents Association; one person
1278 appointed by the State Surgeon General; two persons appointed by
1279 the Secretary of Health Care Administration; one person
1280 appointed by the Florida Association of Homes for the Aging; and
1281 one person appointed by the Florida Health Care Association.
1282 Vacancies on the panel shall be filled in the same manner as the
1283 original appointments.

1284 (5) Facilities must meet the following additional criteria
1285 for recognition as a Gold Seal Program facility:

1286 (f) Evidence that verified an outstanding record regarding
1287 the number and types of substantiated complaints reported to the
1288 Office of State Long-Term Care Ombudsman Council within the 30
1289 months preceding application for the program have been resolved
1290 or, if not resolved, the facility has made a good faith effort
1291 to resolve the complaints.

1292
1293 A facility assigned a conditional licensure status may not
1294 qualify for consideration for the Gold Seal Program until after
1295 it has operated for 30 months with no class I or class II
1296 deficiencies and has completed a regularly scheduled relicensure
1297 survey.

1298 (6) The agency, nursing facility industry organizations,
1299 consumers, Office of State Long-Term Care Ombudsman Council, and
1300 members of the community may recommend to the Governor
1301 facilities that meet the established criteria for consideration
1302 for and award of the Gold Seal. The panel shall review nominees

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1303 and make a recommendation to the Governor for final approval and
1304 award. The decision of the Governor is final and is not subject
1305 to appeal.

1306 Section 29. Present subsections (18) through (28) of
1307 section 415.102, Florida Statutes, are redesignated as
1308 subsections (19) through (29), respectively, and a new
1309 subsection (18) is added to that section, to read:

1310 415.102 Definitions of terms used in ss. 415.101-415.113.—
1311 As used in ss. 415.101-415.113, the term:

1312 (18) "Office" has the same meaning as in s. 400.0060.

1313 Section 30. Paragraph (a) of subsection (1) of section
1314 415.1034, Florida Statutes, is amended to read:

1315 415.1034 Mandatory reporting of abuse, neglect, or
1316 exploitation of vulnerable adults; mandatory reports of death.—

1317 (1) MANDATORY REPORTING.—

1318 (a) Any person, including, but not limited to, any:

1319 1. Physician, osteopathic physician, medical examiner,
1320 chiropractic physician, nurse, paramedic, emergency medical
1321 technician, or hospital personnel engaged in the admission,
1322 examination, care, or treatment of vulnerable adults;

1323 2. Health professional or mental health professional other
1324 than one listed in subparagraph 1.;

1325 3. Practitioner who relies solely on spiritual means for
1326 healing;

1327 4. Nursing home staff; assisted living facility staff;
1328 adult day care center staff; adult family-care home staff;



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1329 social worker; or other professional adult care, residential, or
1330 institutional staff;

1331 5. State, county, or municipal criminal justice employee
1332 or law enforcement officer;

1333 6. An Employee of the Department of Business and
1334 Professional Regulation conducting inspections of public lodging
1335 establishments under s. 509.032;

1336 7. Florida advocacy council member or representative of
1337 the Office of State Long-Term Care Ombudsman ~~council member~~; or

1338 8. Bank, savings and loan, or credit union officer,
1339 trustee, or employee,

1340
1341 who knows, or has reasonable cause to suspect, that a vulnerable
1342 adult has been or is being abused, neglected, or exploited shall
1343 immediately report such knowledge or suspicion to the central
1344 abuse hotline.

1345 Section 31. Subsection (1) of section 415.104, Florida
1346 Statutes, is amended to read:

1347 415.104 Protective investigations of cases of abuse,
1348 neglect, or exploitation of vulnerable adults; transmittal of
1349 records to state attorney.-

1350 (1) The department shall, upon receipt of a report
1351 alleging abuse, neglect, or exploitation of a vulnerable adult,
1352 begin within 24 hours a protective investigation of the facts
1353 alleged therein. If a caregiver refuses to allow the department
1354 to begin a protective investigation or interferes with the



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1355 conduct of such an investigation, the appropriate law
1356 enforcement agency shall be contacted for assistance. If, during
1357 the course of the investigation, the department has reason to
1358 believe that the abuse, neglect, or exploitation is perpetrated
1359 by a second party, the appropriate law enforcement agency and
1360 state attorney shall be orally notified. The department and the
1361 law enforcement agency shall cooperate to allow the criminal
1362 investigation to proceed concurrently with, and not be hindered
1363 by, the protective investigation. The department shall make a
1364 preliminary written report to the law enforcement agencies
1365 within 5 working days after the oral report. The department
1366 shall, within 24 hours after receipt of the report, notify the
1367 appropriate Florida local advocacy council, or the office long-
1368 ~~term care ombudsman council~~, when appropriate, that an alleged
1369 abuse, neglect, or exploitation perpetrated by a second party
1370 has occurred. Notice to the Florida local advocacy council or
1371 the office long term care ombudsman council may be accomplished
1372 orally or in writing and shall include the name and location of
1373 the vulnerable adult alleged to have been abused, neglected, or
1374 exploited and the nature of the report.

1375 Section 32. Subsection (8) of section 415.1055, Florida
1376 Statutes, is amended to read:

1377 415.1055 Notification to administrative entities.-

1378 (8) At the conclusion of a protective investigation at a
1379 facility, the department shall notify ~~either~~ the Florida local
1380 advocacy council or the office long term care ombudsman council



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1381 of the results of the investigation. This notification must be
1382 in writing.

1383 Section 33. Subsection (2) of section 415.106, Florida
1384 Statutes, is amended to read:

1385 415.106 Cooperation by the department and criminal justice
1386 and other agencies.—

1387 (2) To ensure coordination, communication, and cooperation
1388 with the investigation of abuse, neglect, or exploitation of
1389 vulnerable adults, the department shall develop and maintain
1390 interprogram agreements or operational procedures among
1391 appropriate departmental programs and the Office of State Long-
1392 Term Care Ombudsman Council, the Florida Statewide Advocacy
1393 Council, and other agencies that provide services to vulnerable
1394 adults. These agreements or procedures must cover such subjects
1395 as the appropriate roles and responsibilities of the department
1396 in identifying and responding to reports of abuse, neglect, or
1397 exploitation of vulnerable adults; the provision of services;
1398 and related coordinated activities.

1399 Section 34. Paragraph (g) of subsection (3) of section
1400 415.107, Florida Statutes, is amended to read:

1401 415.107 Confidentiality of reports and records.—

1402 (3) Access to all records, excluding the name of the
1403 reporter which shall be released only as provided in subsection
1404 (6), shall be granted only to the following persons, officials,
1405 and agencies:



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1406 (g) Any appropriate official of the Florida advocacy
1407 council or the office ~~long-term care ombudsman council~~
1408 investigating a report of known or suspected abuse, neglect, or
1409 exploitation of a vulnerable adult.

1410 Section 35. Present subsections (16) through (26) of
1411 section 429.02, Florida Statutes, are redesignated as
1412 subsections (17) through (27), respectively, present subsections
1413 (11) and (20) are amended, and a new subsection (16) is added to
1414 that section, to read:

1415 429.02 Definitions.—When used in this part, the term:

1416 (11) "Extended congregate care" means acts beyond those
1417 authorized in subsection (17) ~~(16)~~ that may be performed
1418 pursuant to part I of chapter 464 by persons licensed thereunder
1419 while carrying out their professional duties, and other
1420 supportive services which may be specified by rule. The purpose
1421 of such services is to enable residents to age in place in a
1422 residential environment despite mental or physical limitations
1423 that might otherwise disqualify them from residency in a
1424 facility licensed under this part.

1425 (16) "Office" has the same meaning as in s. 400.0060.

1426 (21) ~~(20)~~ "Resident's representative or designee" means a
1427 person other than the owner, or an agent or employee of the
1428 facility, designated in writing by the resident, if legally
1429 competent, to receive notice of changes in the contract executed
1430 pursuant to s. 429.24; to receive notice of and to participate
1431 in meetings between the resident and the facility owner,



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1432 administrator, or staff concerning the rights of the resident;
1433 to assist the resident in contacting the office ombudsman
1434 ~~council~~ if the resident has a complaint against the facility; or
1435 to bring legal action on behalf of the resident pursuant to s.
1436 429.29.

1437 Section 36. Paragraph (b) of subsection (3) of section
1438 429.07, Florida Statutes, is amended to read:

1439 429.07 License required; fee.—

1440 (3) In addition to the requirements of s. 408.806, each
1441 license granted by the agency must state the type of care for
1442 which the license is granted. Licenses shall be issued for one
1443 or more of the following categories of care: standard, extended
1444 congregate care, limited nursing services, or limited mental
1445 health.

1446 (b) An extended congregate care license shall be issued to
1447 facilities providing, directly or through contract, services
1448 beyond those authorized in paragraph (a), including services
1449 performed by persons licensed under part I of chapter 464 and
1450 supportive services, as defined by rule, to persons who would
1451 otherwise be disqualified from continued residence in a facility
1452 licensed under this part.

1453 1. In order for extended congregate care services to be
1454 provided, the agency must first determine that all requirements
1455 established in law and rule are met and must specifically
1456 designate, on the facility's license, that such services may be
1457 provided and whether the designation applies to all or part of



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1458 the facility. Such designation may be made at the time of
1459 initial licensure or relicensure, or upon request in writing by
1460 a licensee under this part and part II of chapter 408. The
1461 notification of approval or the denial of the request shall be
1462 made in accordance with part II of chapter 408. Existing
1463 facilities qualifying to provide extended congregate care
1464 services must have maintained a standard license and may not
1465 have been subject to administrative sanctions during the
1466 previous 2 years, or since initial licensure if the facility has
1467 been licensed for less than 2 years, for any of the following
1468 reasons:

- 1469 a. A class I or class II violation;
- 1470 b. Three or more repeat or recurring class III violations
1471 of identical or similar resident care standards from which a
1472 pattern of noncompliance is found by the agency;
- 1473 c. Three or more class III violations that were not
1474 corrected in accordance with the corrective action plan approved
1475 by the agency;
- 1476 d. Violation of resident care standards which results in
1477 requiring the facility to employ the services of a consultant
1478 pharmacist or consultant dietitian;
- 1479 e. Denial, suspension, or revocation of a license for
1480 another facility licensed under this part in which the applicant
1481 for an extended congregate care license has at least 25 percent
1482 ownership interest; or



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1483 f. Imposition of a moratorium pursuant to this part or
1484 part II of chapter 408 or initiation of injunctive proceedings.

1485 2. A facility that is licensed to provide extended
1486 congregate care services shall maintain a written progress
1487 report on each person who receives services which describes the
1488 type, amount, duration, scope, and outcome of services that are
1489 rendered and the general status of the resident's health. A
1490 registered nurse, or appropriate designee, representing the
1491 agency shall visit the facility at least quarterly to monitor
1492 residents who are receiving extended congregate care services
1493 and to determine whether ~~if~~ the facility is in compliance with
1494 this part, part II of chapter 408, and relevant rules. One of
1495 the visits may be in conjunction with the regular survey. The
1496 monitoring visits may be provided through contractual
1497 arrangements with appropriate community agencies. A registered
1498 nurse shall serve as part of the team that inspects the
1499 facility. The agency may waive one of the required yearly
1500 monitoring visits for a facility that has been licensed for at
1501 least 24 months to provide extended congregate care services,
1502 if, during the inspection, the registered nurse determines that
1503 extended congregate care services are being provided
1504 appropriately, and if the facility has no class I or class II
1505 violations and no uncorrected class III violations. The agency
1506 must first consult with the office ~~long-term care ombudsman~~
1507 ~~council~~ for the area in which the facility is located to
1508 determine whether ~~if~~ any complaints have been made and

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1509 substantiated about the quality of services or care. The agency
1510 may not waive one of the required yearly monitoring visits if
1511 complaints have been made and substantiated.

1512 3. A facility that is licensed to provide extended
1513 congregate care services must:

1514 a. Demonstrate the capability to meet unanticipated
1515 resident service needs.

1516 b. Offer a physical environment that promotes a homelike
1517 setting, provides for resident privacy, promotes resident
1518 independence, and allows sufficient congregate space as defined
1519 by rule.

1520 c. Have sufficient staff available, taking into account
1521 the physical plant and firesafety features of the building, to
1522 assist with the evacuation of residents in an emergency.

1523 d. Adopt and follow policies and procedures that maximize
1524 resident independence, dignity, choice, and decisionmaking to
1525 permit residents to age in place, so that moves due to changes
1526 in functional status are minimized or avoided.

1527 e. Allow residents or, if applicable, a resident's
1528 representative, designee, surrogate, guardian, or attorney in
1529 fact to make a variety of personal choices, participate in
1530 developing service plans, and share responsibility in
1531 decisionmaking.

1532 f. Implement the concept of managed risk.

1533 g. Provide, directly or through contract, the services of
1534 a person licensed under part I of chapter 464.

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1535 h. In addition to the training mandated in s. 429.52,
1536 provide specialized training as defined by rule for facility
1537 staff.

1538 4. A facility that is licensed to provide extended
1539 congregate care services is exempt from the criteria for
1540 continued residency set forth in rules adopted under s. 429.41.
1541 A licensed facility must adopt its own requirements within
1542 guidelines for continued residency set forth by rule. However,
1543 the facility may not serve residents who require 24-hour nursing
1544 supervision. A licensed facility that provides extended
1545 congregate care services must also provide each resident with a
1546 written copy of facility policies governing admission and
1547 retention.

1548 5. The primary purpose of extended congregate care
1549 services is to allow residents, as they become more impaired,
1550 the option of remaining in a familiar setting from which they
1551 would otherwise be disqualified for continued residency. A
1552 facility licensed to provide extended congregate care services
1553 may also admit an individual who exceeds the admission criteria
1554 for a facility with a standard license, if the individual is
1555 determined appropriate for admission to the extended congregate
1556 care facility.

1557 6. Before the admission of an individual to a facility
1558 licensed to provide extended congregate care services, the
1559 individual must undergo a medical examination as provided in s.



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1560 429.26(4) and the facility must develop a preliminary service
1561 plan for the individual.

1562 7. When a facility can no longer provide or arrange for
1563 services in accordance with the resident's service plan and
1564 needs and the facility's policy, the facility shall make
1565 arrangements for relocating the person in accordance with s.
1566 429.28(1)(k).

1567 8. Failure to provide extended congregate care services
1568 may result in denial of extended congregate care license
1569 renewal.

1570 Section 37. Subsection (9) of section 429.19, Florida
1571 Statutes, is amended to read:

1572 429.19 Violations; imposition of administrative fines;
1573 grounds.-

1574 (9) The agency shall develop and disseminate an annual
1575 list of all facilities sanctioned or fined for violations of
1576 state standards, the number and class of violations involved,
1577 the penalties imposed, and the current status of cases. The list
1578 shall be disseminated, at no charge, to the Department of
1579 Elderly Affairs, the Department of Health, the Department of
1580 Children and Families ~~Family Services~~, the Agency for Persons
1581 with Disabilities, the area agencies on aging, the Florida
1582 Statewide Advocacy Council, and the office ~~state and local~~
1583 ~~ombudsman councils~~. The Department of Children and Families
1584 ~~Family Services~~ shall disseminate the list to service providers
1585 under contract to the department who are responsible for



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1586 referring persons to a facility for residency. The agency may
1587 charge a fee commensurate with the cost of printing and postage
1588 to other interested parties requesting a copy of this list. This
1589 information may be provided electronically or through the
1590 agency's Internet site.

1591 Section 38. Subsection (8) of section 429.26, Florida
1592 Statutes, is amended to read:

1593 429.26 Appropriateness of placements; examinations of
1594 residents.—

1595 (8) The Department of Children and Families ~~Family~~
1596 ~~Services~~ may require an examination for supplemental security
1597 income and optional state supplementation recipients residing in
1598 facilities at any time and shall provide the examination
1599 whenever a resident's condition requires it. Any facility
1600 administrator; personnel of the agency, the department, or the
1601 Department of Children and Families ~~Family Services~~; or
1602 representative of the Office of the State Long-Term Care
1603 Ombudsman ~~long term care ombudsman council member~~ who believes a
1604 resident needs to be evaluated shall notify the resident's case
1605 manager, who shall take appropriate action. A report of the
1606 examination findings shall be provided to the resident's case
1607 manager and the facility administrator to help the administrator
1608 meet his or her responsibilities under subsection (1).

1609 Section 39. Subsection (2) and paragraph (b) of subsection
1610 (3) of section 429.28, Florida Statutes, are amended to read:

1611 429.28 Resident bill of rights.—



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1612 (2) The administrator of a facility shall ensure that a
1613 written notice of the rights, obligations, and prohibitions set
1614 forth in this part is posted in a prominent place in each
1615 facility and read or explained to residents who cannot read.
1616 This notice must ~~shall~~ include the statewide toll-free telephone
1617 number and e-mail address of the state ombudsman program and the
1618 telephone number of the name, address, and telephone numbers of
1619 ~~the local ombudsman council~~ and central abuse hotline and, when
1620 applicable, the Advocacy Center for Persons with Disabilities,
1621 Inc., and the Florida local advocacy council, where complaints
1622 may be lodged. The facility must ensure a resident's access to a
1623 telephone to call the state local ombudsman program council, the
1624 central abuse hotline, the Advocacy Center for Persons with
1625 Disabilities, Inc., and the Florida local advocacy council.

1626 (3)

1627 (b) In order to determine whether the facility is
1628 adequately protecting residents' rights, the biennial survey
1629 shall include private informal conversations with a sample of
1630 residents and consultation with the state ombudsman program
1631 ~~council~~ in the planning and service area in which the facility
1632 is located to discuss residents' experiences within the
1633 facility.

1634 Section 40. Section 429.34, Florida Statutes, is amended
1635 to read:

1636 429.34 Right of entry and inspection.—In addition to the
1637 requirements of s. 408.811, a ~~any~~ duly designated officer or



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1638 employee of the department, the Department of Children and
1639 Families Family Services, the Medicaid Fraud Control Unit of the
1640 Office of the Attorney General, the state or local fire marshal,
1641 or a representative member of the Office of the State Long-Term
1642 Care Ombudsman may ~~state or local long term care ombudsman~~
1643 ~~council shall have the right to~~ enter unannounced upon and into
1644 the premises of any facility licensed under ~~pursuant to~~ this
1645 part in order to determine the state of compliance with ~~the~~
1646 ~~provisions of~~ this part, part II of chapter 408, and applicable
1647 rules. Data collected by the office ~~state or local long term~~
1648 ~~care ombudsman councils~~ or the state or local advocacy councils
1649 may be used by the agency in investigations involving violations
1650 of regulatory standards.

1651 Section 41. Subsection (2) of section 429.35, Florida
1652 Statutes, is amended to read:

1653 429.35 Maintenance of records; reports.-

1654 (2) Within 60 days after the date of the biennial
1655 inspection visit required under s. 408.811 or within 30 days
1656 after the date of any interim visit, the agency shall forward
1657 the results of the inspection to the office ~~local ombudsman~~
1658 ~~council in whose planning and service area, as defined in part~~
1659 ~~II of chapter 400, the facility is located;~~ to at least one
1660 public library or, in the absence of a public library, the
1661 county seat in the county in which the inspected assisted living
1662 facility is located; and, when appropriate, to the district
1663 Adult Services and Mental Health Program Offices.

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Amendment No.

1664 Section 42. Subsection (6) of section 429.67, Florida
1665 Statutes, is amended to read:

1666 429.67 Licensure.—

1667 (6) In addition to the requirements of s. 408.811, access
1668 to a licensed adult family-care home must be provided at
1669 reasonable times for the appropriate officials of the
1670 department, the Department of Health, the Department of Children
1671 and Families Family Services, the agency, and the State Fire
1672 Marshal, who are responsible for the development and maintenance
1673 of fire, health, sanitary, and safety standards, to inspect the
1674 facility to assure compliance with these standards. In addition,
1675 access to a licensed adult family-care home must be provided at
1676 reasonable times to representatives of the Office of State ~~for~~
1677 ~~the local~~ Long-Term Care Ombudsman ~~council~~.

1678 Section 43. Subsection (2) of section 429.85, Florida
1679 Statutes, is amended to read:

1680 429.85 Residents' bill of rights.—

1681 (2) The provider shall ensure that residents and their
1682 legal representatives are made aware of the rights, obligations,
1683 and prohibitions set forth in this part. Residents must also be
1684 given the statewide toll-free telephone number and e-mail
1685 address of the state ombudsman program and the telephone number
1686 of names, addresses, and telephone numbers of the local
1687 ~~ombudsman council~~ and the central abuse hotline where they may
1688 lodge complaints.



Amendment No.

1689 Section 44. Subsection (17) of section 744.444, Florida
1690 Statutes, is amended to read:

1691 744.444 Power of guardian without court approval.—Without
1692 obtaining court approval, a plenary guardian of the property, or
1693 a limited guardian of the property within the powers granted by
1694 the order appointing the guardian or an approved annual or
1695 amended guardianship report, may:

1696 (17) Provide confidential information about a ward which
1697 ~~that~~ is related to an investigation arising under part I of
1698 chapter 400 to a representative of the Office of the State Long-
1699 Term Care Ombudsman ~~local or state ombudsman council member~~
1700 conducting such an investigation. Any such ombudsman shall have
1701 a duty to maintain the confidentiality of such information.

1702 Section 45. This act shall take effect July 1, 2014.
1703
1704
1705

1706 -----

1707 **T I T L E A M E N D M E N T**

1708 Remove everything before the enacting clause and insert:
1709 An act relating to the state ombudsman program; amending s.
1710 400.0060, F.S.; revising and providing definitions; amending s.
1711 400.0061, F.S.; revising legislative intent with respect to
1712 citizen ombudsmen; deleting references to ombudsman councils and
1713 transferring their responsibilities to representatives of the
1714 Office of State Long-Term Care Ombudsman; amending s. 400.0063,



Amendment No.

1715 F.S.; revising duties of the office; amending s. 400.0065, F.S.;
1716 revising the purpose of the office; revising the duties and
1717 authority of the state ombudsman; requiring the state ombudsman
1718 to submit an annual report to the Governor, the Legislature, and
1719 specified agencies and entities; amending s. 400.0067, F.S.;
1720 revising duties and membership of the State Long-Term Care
1721 Ombudsman Council; amending s. 400.0069, F.S.; requiring the
1722 state ombudsman to designate and direct program districts;
1723 providing duties of representatives of the office in the
1724 districts; revising the appointments of and qualifications for
1725 district ombudsmen; prohibiting certain individuals from serving
1726 as ombudsmen; deleting provisions that provide for an election
1727 of a chair of a local council and the meeting times for the
1728 local council; amending s. 400.0070, F.S.; providing conditions
1729 under which a representative of the office could be found to
1730 have a conflict of interest; requiring the Department of Elderly
1731 Affairs, in consultation with the state ombudsman, to define by
1732 rule what constitutes a conflict of interest; amending s.
1733 400.0071, F.S.; requiring the Department of Elderly Affairs to
1734 consult with the state ombudsman to adopt rules pertaining to
1735 complaint procedures; amending s. 400.0073, F.S.; providing
1736 procedures for investigation of complaints; amending s.
1737 400.0074, F.S.; revising procedures for conducting onsite
1738 administrative assessments; authorizing the department to adopt
1739 rules; amending s. 400.0075, F.S.; revising complaint
1740 notification and resolution procedures; amending s. 400.0078,

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Amendment No.

1741 F.S.; providing for a resident or representative of a resident
1742 to receive additional information regarding resident rights;
1743 amending s. 400.0079, F.S.; providing immunity from liability
1744 for a representative of the office under certain circumstances;
1745 amending s. 400.0081, F.S.; requiring long-term care facilities
1746 to provide representatives of the office with access to
1747 facilities, residents, and records for certain purposes;
1748 amending s. 400.0083, F.S.; conforming provisions to changes
1749 made by the act; amending s. 400.0087, F.S.; providing for the
1750 office to coordinate ombudsman services with Disability Rights
1751 Florida; amending s. 400.0089, F.S.; conforming provisions to
1752 changes made by the act; amending s. 400.0091, F.S.; revising
1753 training requirements for representatives of the office and
1754 ombudsmen; amending ss. 20.41, 400.021, 400.022, 400.0255,
1755 400.1413, 400.162, 400.19, 400.191, 400.23, 400.235, 415.102,
1756 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.07,
1757 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, 429.85, and
1758 744.444, F.S.; conforming provisions to changes made by the act;
1759 providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 419 Pub. Rec./Department of Health Personnel

SPONSOR(S): Health Quality Subcommittee; Renuart

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	13 Y, 0 N, As CS	Guzzo	O'Callaghan
2) Government Operations Subcommittee	11 Y, 0 N	Williamson	Williamson
3) Health & Human Services Committee		Guzzo <i>7/6</i>	Calamas <i>CC</i>

SUMMARY ANALYSIS

Current law provides public record exemptions for identification and location information of certain current or former public employees and their spouses and children.

The bill expands the current public record exemption to include the home addresses, telephone numbers, dates of birth, and photographs of current and former Department of Health (DOH) personnel, whose duties include, or result in, the:

- Determination or adjudication of eligibility for social security disability benefits;
- Investigation or prosecution of complaints filed against health care practitioners; or the
- Inspection of health care practitioners or health care facilities licensed by DOH.

In addition to providing a public record exemption for DOH personnel, the bill provides that the following information relating to the families of such personnel is exempt from public record requirements:

- Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill will have an insignificant negative fiscal impact on DOH.

The bill provides an effective date of upon becoming a law.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Public Record Exemptions

Current law provides public record exemptions for identification and location information of certain current or former public employees and their spouses and children.³ Examples of public employees covered by these exemptions include law enforcement personnel, firefighters, local government personnel who are responsible for revenue collection and enforcement or child support enforcement, justices and judges, and local and statewide prosecuting attorneys.

Although the types of exempt information vary, the following information is exempt⁴ from public record requirements for all of the above-listed public employees:

- Home addresses and telephone numbers of the public employees;
- Home addresses, telephone numbers, and places of employment of the spouses and children of such employees; and

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ See s. 119.071(4)(d), F.S.

⁴ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

- Names and locations of schools and day care facilities attended by the children of such employees.

If exempt information is held by an agency⁵ that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public record exemption.⁶

Currently, personal information of Department of Health investigative staff and their spouses and children is not exempt from public disclosure.⁷

Department of Health – Complaints and Investigations

Pursuant to s. 20.43, F.S., the Department of Health (DOH) is responsible for the regulation of health care practitioners and certain facilities. DOH requires initial and periodic inspections for:⁸

- Pain Management Clinics;
- Pharmacies;
- Dental Laboratories;
- Massage Establishments;
- Electrolysis Establishments;
- Optical Establishments;
- Dispensing Practitioners; and
- Any place in which drugs and medical supplies are manufactured, packed, packaged, made, stored, sold, offered for sale, exposed for sale, or kept for sale.

Many individuals may be involved in an investigative manner throughout the investigation process. Section 456.073(1), F.S., requires DOH inspectors and investigators to investigate any complaint that is determined to be legally sufficient. After review of a complaint, if the allegations and supporting documentation show that a violation may have occurred, the complaint is considered legally sufficient for investigation. A complaint is legally sufficient if it contains ultimate facts that show there has been a violation of chapter 456, F.S., any of the practice acts relating to the professions regulated by DOH, or of any rule adopted by DOH or a regulatory board.

The Investigative Services Unit (ISU) functions as the investigative arm of DOH as it investigates complaints against health care practitioners and facilities regulated by DOH. ISU includes a staff of professional investigators and senior pharmacists who conduct interviews, collect documents and evidence, prepare investigative reports for the Prosecution Services Unit (PSU), and serve subpoenas and official orders of DOH. Upon completion of collecting information and conducting interviews, the investigator writes an investigative report and the report is forwarded to DOH's attorneys for legal review.⁹

Attorneys within the PSU then review the investigative report to recommend a course of action, which may include:¹⁰

- Emergency orders against licensees who pose an immediate threat to the health, safety, and welfare of individuals;

⁵ Section 119.011(2), F.S., defines "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

⁶ Section 119.071(4)(d)3., F.S.

⁷ *But see* s. 119.071(4)(d)2.a., F.S., re: Department of Health investigators of child abuse.

⁸ Sections 456.069 and 465.017, F.S.

⁹ Florida Department of Health, Division of Medical Quality Assurance,

http://www.doh.state.fl.us/mqa/enforcement/enforce_csu.html (last visited February 13, 2014).

¹⁰ *Id.*

- Expert reviews for complex cases that require professional health care experts to render an opinion;
- Closing orders if the investigation or the expert review does not support the allegations;¹¹ or
- Administrative complaints when the investigation supports the allegations.

When an administrative complaint is filed, the subject has the right to choose a hearing, consent/stipulation agreement, or voluntarily relinquish his or her license. In all of these instances, the case is then presented to the professional board or DOH for final agency action. If the subject appeals the final decision, the PSU attorney defends the final order before the appropriate appellate court.

According to DOH, investigators have recently had to be involved in more investigations that include criminal elements.¹² Investigators who inspect massage establishments are identifying and reporting to law enforcement possible human trafficking activities. Further, investigators have forged strong relationships with law enforcement in an effort to combat the health care concerns caused by illegal “pill mills” and controlled substance abuse in Florida. As DOH investigators are increasingly exposed to potentially dangerous criminal situations, they have become concerned about the release of personal information that may be used by criminals, or individuals under investigation by DOH, to target investigative staff and their families.

Disability Determinations

The Division of Disability Determinations (DDD) within DOH¹³ is responsible for making the determination of medical eligibility for disability benefits under the federal Social Security Administration (SSA) disability programs (Social Security Disability-Title II and Supplemental Security Income-Title XVI). It also is responsible for the continuing disability review of all SSA disability beneficiaries to determine if they continue to meet medical eligibility criteria.¹⁴

Applications for Social Security disability benefits are filed at the claimant’s local SSA field office or online. The application is forwarded to the DDD for development, assessment, and determination of medical eligibility in accordance with Social Security regulations. All relevant medical evidence is procured from the claimant’s medical sources. If the medical evidence is insufficient for a determination, the DDD will arrange for a consultative examination targeted to the claimant’s alleged disability. The claimant also is contacted for detailed information on activities of daily living, clarification of symptoms, work history, and other pertinent information. After the claim file is documented and a determination of medical eligibility is made, DDD prepares and releases notification of denial to the claimant, or the claim file is returned to the SSA for a final determination of technical (non-medical) eligibility and processing for any benefits due the claimant.¹⁵

According to DOH, in the past three years, DDD has received 100 credible and significant threats against their employees, usually stemming from the denial of disability benefits.¹⁶

Effect of Proposed Changes

The bill expands the current public record exemption for identification and location information of public employees to include the home addresses, telephone numbers, dates of birth, and photographs of current and former DOH personnel, whose duties include, or result in, the:

¹¹ Cases closed with no finding of probable cause are generally confidential and are not available through a public records request.

¹² HB 419 Agency Legislative Bill Analysis, Department of Health, at page 2, December 19, 2013 (on file with the Health Quality Subcommittee).

¹³ Section 20.43(3)(h), F.S.

¹⁴ Florida Department of Health, Disability Determinations, <http://www.floridahealth.gov/healthy-people-and-families/people-with-disabilities/disability-determinations/index.html> (last visited February 13, 2014).

¹⁵ *Id.*

¹⁶ HB 419 Agency Legislative Bill Analysis, Department of Health, at page 2, December 19, 2013 (on file with the Health Quality Subcommittee).

- Determination or adjudication of eligibility for social security disability benefits;
- Investigation or prosecution of complaints filed against health care practitioners; or the
- Inspection of health care practitioners or health care facilities licensed by DOH.

In addition, the bill provides a public record exemption for certain identification and location information for the spouses and children of such DOH personnel. Specifically, the bill provides that the following information relating to the families of such personnel is exempt from public record requirements:

- Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The public record exemption only applies if such DOH personnel have made reasonable efforts to protect the information from being accessible through other means available to the public.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.¹⁷ The public necessity statement declares the public record exemption is necessary as the release of such identifying and location information might place these current or former personnel of DOH and their families in danger of physical and emotional harm from disgruntled individuals who have contentious reactions to actions carried out by such personnel. Further, the harm that may result from the release of such personal identifying information outweighs any public benefit derived from disclosure of the information.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill could create a minimal fiscal impact on DOH, because DOH staff would be responsible for complying with public record requests and may require training related to the expansion of the public record exemption. In addition, DOH could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of DOH.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

¹⁷ See s. 24(c), Art. I of the State Constitution.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution, requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information relating to the identification and location of certain personnel of the Department of Health. The exemption does not appear to be in conflict with the constitutional requirement that the exemption must be no broader than necessary to accomplish its purpose.

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 18, 2014, the Health Quality Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Adds “dates of birth” to the personal identification information included in the public record exemptions for certain DOH personnel and their families; and
- Clarifies the specific DOH personnel to whom the public record exemptions apply.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

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A bill to be entitled
 An act relating to public records; amending s.
 119.071, F.S.; providing an exemption from public
 records requirements for certain identifying
 information of specific current and former personnel
 of the Department of Health and the spouses and
 children of such personnel; providing for future
 legislative review and repeal of the exemption;
 providing a statement of public necessity; providing
 an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section
 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of
 public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone
 numbers" includes home telephone numbers, personal cellular
 telephone numbers, personal pager telephone numbers, and
 telephone numbers associated with personal communications
 devices.

2.a.(I) The home addresses, telephone numbers, social
 security numbers, dates of birth, and photographs of active or
 former sworn or civilian law enforcement personnel, including

27 | correctional and correctional probation officers, personnel of
 28 | the Department of Children and Families whose duties include the
 29 | investigation of abuse, neglect, exploitation, fraud, theft, or
 30 | other criminal activities, personnel of the Department of Health
 31 | whose duties are to support the investigation of child abuse or
 32 | neglect, and personnel of the Department of Revenue or local
 33 | governments whose responsibilities include revenue collection
 34 | and enforcement or child support enforcement; the home
 35 | addresses, telephone numbers, social security numbers,
 36 | photographs, dates of birth, and places of employment of the
 37 | spouses and children of such personnel; and the names and
 38 | locations of schools and day care facilities attended by the
 39 | children of such personnel are exempt from s. 119.07(1).

40 | (II) The names of the spouses and children of active or
 41 | former sworn or civilian law enforcement personnel and the other
 42 | specified agency personnel identified in sub-sub-subparagraph
 43 | (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 44 | State Constitution.

45 | (III) Sub-sub-subparagraph (II) is subject to the Open
 46 | Government Sunset Review Act in accordance with s. 119.15~~7~~ and
 47 | shall stand repealed on October 2, 2018, unless reviewed and
 48 | saved from repeal through reenactment by the Legislature.

49 | b. The home addresses, telephone numbers, dates of birth,
 50 | and photographs of firefighters certified in compliance with s.
 51 | 633.408; the home addresses, telephone numbers, photographs,
 52 | dates of birth, and places of employment of the spouses and

53 children of such firefighters; and the names and locations of
54 schools and day care facilities attended by the children of such
55 firefighters are exempt from s. 119.07(1).

56 c. The home addresses, dates of birth, and telephone
57 numbers of current or former justices of the Supreme Court,
58 district court of appeal judges, circuit court judges, and
59 county court judges; the home addresses, telephone numbers,
60 dates of birth, and places of employment of the spouses and
61 children of current or former justices and judges; and the names
62 and locations of schools and day care facilities attended by the
63 children of current or former justices and judges are exempt
64 from s. 119.07(1).

65 d.(I) The home addresses, telephone numbers, social
66 security numbers, dates of birth, and photographs of current or
67 former state attorneys, assistant state attorneys, statewide
68 prosecutors, or assistant statewide prosecutors; the home
69 addresses, telephone numbers, social security numbers,
70 photographs, dates of birth, and places of employment of the
71 spouses and children of current or former state attorneys,
72 assistant state attorneys, statewide prosecutors, or assistant
73 statewide prosecutors; and the names and locations of schools
74 and day care facilities attended by the children of current or
75 former state attorneys, assistant state attorneys, statewide
76 prosecutors, or assistant statewide prosecutors are exempt from
77 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

78 (II) The names of the spouses and children of current or

79 former state attorneys, assistant state attorneys, statewide
 80 prosecutors, or assistant statewide prosecutors are exempt from
 81 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

82 (III) Sub-sub-subparagraph (II) is subject to the Open
 83 Government Sunset Review Act in accordance with s. 119.15~~7~~ and
 84 shall stand repealed on October 2, 2018, unless reviewed and
 85 saved from repeal through reenactment by the Legislature.

86 e. The home addresses, dates of birth, and telephone
 87 numbers of general magistrates, special magistrates, judges of
 88 compensation claims, administrative law judges of the Division
 89 of Administrative Hearings, and child support enforcement
 90 hearing officers; the home addresses, telephone numbers, dates
 91 of birth, and places of employment of the spouses and children
 92 of general magistrates, special magistrates, judges of
 93 compensation claims, administrative law judges of the Division
 94 of Administrative Hearings, and child support enforcement
 95 hearing officers; and the names and locations of schools and day
 96 care facilities attended by the children of general magistrates,
 97 special magistrates, judges of compensation claims,
 98 administrative law judges of the Division of Administrative
 99 Hearings, and child support enforcement hearing officers are
 100 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 101 Constitution if the general magistrate, special magistrate,
 102 judge of compensation claims, administrative law judge of the
 103 Division of Administrative Hearings, or child support hearing
 104 officer provides a written statement that the general

105 magistrate, special magistrate, judge of compensation claims,
 106 administrative law judge of the Division of Administrative
 107 Hearings, or child support hearing officer has made reasonable
 108 efforts to protect such information from being accessible
 109 through other means available to the public.

110 f. The home addresses, telephone numbers, dates of birth,
 111 and photographs of current or former human resource, labor
 112 relations, or employee relations directors, assistant directors,
 113 managers, or assistant managers of any local government agency
 114 or water management district whose duties include hiring and
 115 firing employees, labor contract negotiation, administration, or
 116 other personnel-related duties; the names, home addresses,
 117 telephone numbers, dates of birth, and places of employment of
 118 the spouses and children of such personnel; and the names and
 119 locations of schools and day care facilities attended by the
 120 children of such personnel are exempt from s. 119.07(1) and s.
 121 24(a), Art. I of the State Constitution.

122 g. The home addresses, telephone numbers, dates of birth,
 123 and photographs of current or former code enforcement officers;
 124 the names, home addresses, telephone numbers, dates of birth,
 125 and places of employment of the spouses and children of such
 126 personnel; and the names and locations of schools and day care
 127 facilities attended by the children of such personnel are exempt
 128 from s. 119.07(1) and s. 24(a), Art. I of the State
 129 Constitution.

130 h. The home addresses, telephone numbers, places of

131 employment, dates of birth, and photographs of current or former
 132 guardians ad litem, as defined in s. 39.820; the names, home
 133 addresses, telephone numbers, dates of birth, and places of
 134 employment of the spouses and children of such persons; and the
 135 names and locations of schools and day care facilities attended
 136 by the children of such persons are exempt from s. 119.07(1) and
 137 s. 24(a), Art. I of the State Constitution, if the guardian ad
 138 litem provides a written statement that the guardian ad litem
 139 has made reasonable efforts to protect such information from
 140 being accessible through other means available to the public.

141 i. The home addresses, telephone numbers, dates of birth,
 142 and photographs of current or former juvenile probation
 143 officers, juvenile probation supervisors, detention
 144 superintendents, assistant detention superintendents, juvenile
 145 justice detention officers I and II, juvenile justice detention
 146 officer supervisors, juvenile justice residential officers,
 147 juvenile justice residential officer supervisors I and II,
 148 juvenile justice counselors, juvenile justice counselor
 149 supervisors, human services counselor administrators, senior
 150 human services counselor administrators, rehabilitation
 151 therapists, and social services counselors of the Department of
 152 Juvenile Justice; the names, home addresses, telephone numbers,
 153 dates of birth, and places of employment of spouses and children
 154 of such personnel; and the names and locations of schools and
 155 day care facilities attended by the children of such personnel
 156 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State

157 Constitution.

158 j. The home addresses, telephone numbers, dates of birth,
 159 and photographs of current or former public defenders, assistant
 160 public defenders, criminal conflict and civil regional counsel,
 161 and assistant criminal conflict and civil regional counsel; the
 162 home addresses, telephone numbers, dates of birth, and places of
 163 employment of the spouses and children of such defenders or
 164 counsel; and the names and locations of schools and day care
 165 facilities attended by the children of such defenders or counsel
 166 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 167 Constitution.

168 k. The home addresses, telephone numbers, and photographs
 169 of current or former investigators or inspectors of the
 170 Department of Business and Professional Regulation; the names,
 171 home addresses, telephone numbers, and places of employment of
 172 the spouses and children of such current or former investigators
 173 and inspectors; and the names and locations of schools and day
 174 care facilities attended by the children of such current or
 175 former investigators and inspectors are exempt from s. 119.07(1)
 176 and s. 24(a), Art. I of the State Constitution if the
 177 investigator or inspector has made reasonable efforts to protect
 178 such information from being accessible through other means
 179 available to the public. This sub-subparagraph is subject to the
 180 Open Government Sunset Review Act in accordance with s. 119.15
 181 and shall stand repealed on October 2, 2017, unless reviewed and
 182 saved from repeal through reenactment by the Legislature.

183 1. The home addresses and telephone numbers of county tax
 184 collectors; the names, home addresses, telephone numbers, and
 185 places of employment of the spouses and children of such tax
 186 collectors; and the names and locations of schools and day care
 187 facilities attended by the children of such tax collectors are
 188 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 189 Constitution if the county tax collector has made reasonable
 190 efforts to protect such information from being accessible
 191 through other means available to the public. This sub-
 192 subparagraph is subject to the Open Government Sunset Review Act
 193 in accordance with s. 119.15 and shall stand repealed on October
 194 2, 2017, unless reviewed and saved from repeal through
 195 reenactment by the Legislature.

196 m. The home addresses, telephone numbers, dates of birth,
 197 and photographs of current or former personnel of the Department
 198 of Health whose duties include, or result in, the determination
 199 or adjudication of eligibility for social security disability
 200 benefits, the investigation or prosecution of complaints filed
 201 against health care practitioners, or the inspection of health
 202 care practitioners or health care facilities licensed by the
 203 Department of Health; the names, home addresses, telephone
 204 numbers, dates of birth, and places of employment of the spouses
 205 and children of such personnel; and the names and locations of
 206 schools and day care facilities attended by the children of such
 207 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 208 the State Constitution if the personnel have made reasonable

209 efforts to protect such information from being accessible
 210 through other means available to the public. This sub-
 211 paragraph is subject to the Open Government Sunset Review Act
 212 in accordance with s. 119.15 and shall stand repealed on October
 213 2, 2019, unless reviewed and saved from repeal through
 214 reenactment by the Legislature.

215 3. An agency that is the custodian of the information
 216 specified in subparagraph 2. and that is not the employer of the
 217 officer, employee, justice, judge, or other person specified in
 218 subparagraph 2. shall maintain the exempt status of that
 219 information only if the officer, employee, justice, judge, other
 220 person, or employing agency of the designated employee submits a
 221 written request for maintenance of the exemption to the
 222 custodial agency.

223 4. The exemptions in this paragraph apply to information
 224 held by an agency before, on, or after the effective date of the
 225 exemption.

226 5. Except as otherwise expressly provided in this
 227 paragraph, this paragraph is subject to the Open Government
 228 Sunset Review Act in accordance with s. 119.15, and shall stand
 229 repealed on October 2, 2017, unless reviewed and saved from
 230 repeal through reenactment by the Legislature.

231 Section 2. The Legislature finds that it is a public
 232 necessity that the home addresses, telephone numbers, dates of
 233 birth, and photographs of current or former personnel of the
 234 Department of Health whose duties include, or result in, the

235 determination or adjudication of eligibility for social security
 236 disability benefits, the investigation or prosecution of
 237 complaints filed against health care practitioners, or the
 238 inspection of health care practitioners or health care
 239 facilities licensed by the Department of Health; that the names,
 240 home addresses, telephone numbers, dates of birth, and places of
 241 employment of the spouses and children of such personnel; and
 242 that the names and locations of schools and day care facilities
 243 attended by the children of such personnel be made exempt from
 244 public records requirements. The Legislature finds that the
 245 release of such identifying and location information might place
 246 such current or former personnel of the Department of Health and
 247 their family members in danger of physical and emotional harm
 248 from disgruntled individuals who have contentious reactions to
 249 actions carried out by such personnel of the Department of
 250 Health, or whose business or professional practices have come
 251 under the scrutiny of investigators and inspectors of the
 252 Department of Health. The Legislature further finds that the
 253 harm that may result from the release of such identifying and
 254 location information outweighs any public benefit derived from
 255 disclosure of the information.

256 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 589 Children and Youth Cabinet
SPONSOR(S): Choice & Innovation Subcommittee and Harrell
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Choice & Innovation Subcommittee	13 Y, 0 N, As CS	Rininger	Fudge
2) Health & Human Services Committee		Entress <i>RE</i>	Calamas <i>CS</i>
3) Education Committee			

SUMMARY ANALYSIS

The Florida Children and Youth Cabinet (Cabinet) consists of the Governor and 14 members. These members include the Secretary of the Department of Children and Families, the Secretary of Juvenile Justice, the director of the Agency for Persons with Disabilities, the director of the Office of Early Learning, the State Surgeon General, the Secretary of Health Care Administration, the Commissioner of Education, the director of the Statewide Guardian Ad Litem Office, the director of the Office of Child Abuse Prevention, and five members appointed by the Governor who represent children and youth advocacy organizations.

The bill creates one additional Cabinet position to be held by a superintendent of schools who is appointed by the Governor.

The bill does not have a fiscal impact on state or local governments.

The bill takes effect July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Children and Youth Cabinet (Cabinet) was created in 2007.¹ The Florida Legislature recognized the need to collaborate with the Governor to improve child and family outcomes in the state.² Among other things, the Cabinet was created to enable state agencies and programs that serve children to coordinate policy development and program implementation so services provided to children and youth are planned, managed, and delivered in a holistic and integrated manner.³

The Cabinet is comprised of the Governor and 14 members. These members include the Secretary of Children and Family Services, the Secretary of Juvenile Justice, the director of the Agency for Persons with Disabilities, the director of the Office of Early Learning, the State Surgeon General, the Secretary of Health Care Administration, the Commissioner of Education, the director of the Statewide Guardian Ad Litem Office, the director of the Office of Child Abuse Prevention, and five members representing children and youth advocacy organizations, who are not service providers and who are appointed by the Governor.⁴

Effect of Proposed Changes

The bill expands the membership of the Cabinet to include the Governor and 15 other members. The additional Cabinet position created by the bill will be a superintendent of schools who is appointed to the Cabinet by the Governor.

Current law states that the "Cabinet shall consist of 14 members including the Governor and the following persons . . ." However, the law lists 14 specific members of the Cabinet in addition to the Governor, bringing the total membership of the Cabinet to 15 members. The bill adds one Cabinet position and changes the total membership figure to 16 members, accounting for the Governor.

B. SECTION DIRECTORY:

Section 1: Amends s. 402.56, F.S., relating to the Children and Youth Cabinet.

Section 2: 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.

¹ The Florida Children and Youth Cabinet, *The Florida Children and Youth Cabinet 2013 Annual Report*, (Jan. 31, 2014), available at http://www.flgov.com/wp-content/uploads/childadvocacy/florida_children_and_youth_cabinet_2013_annual_report.pdf.

² Section 402.56(2)(b), F.S.

³ Section 402.56(3)(a), F.S.

⁴ Section 402.56(4), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2014, the Choice & Innovation Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment revises the total number of members on the cabinet to 16 in order to account for both the Governor and the proposed additional cabinet member.

This bill analysis is drafted to the committee substitute.

1 A bill to be entitled
 2 An act relating to the Children and Youth Cabinet;
 3 amending s. 402.56, F.S.; revising the membership of
 4 the cabinet; providing an effective date.

5
 6 Be It Enacted by the Legislature of the State of Florida:
 7

8 Section 1. Paragraph (a) of subsection (4) of section
 9 402.56, Florida Statutes, is amended to read:

10 402.56 Children's cabinet; organization; responsibilities;
 11 annual report.—

12 (4) MEMBERS.—The cabinet shall consist of 16 ~~14~~ members
 13 including the Governor and the following persons:

- 14 (a)1. The Secretary of Children and Family Services;
- 15 2. The Secretary of Juvenile Justice;
- 16 3. The director of the Agency for Persons with
- 17 Disabilities;
- 18 4. The director of the Office of Early Learning;
- 19 5. The State Surgeon General;
- 20 6. The Secretary of Health Care Administration;
- 21 7. The Commissioner of Education;
- 22 8. The director of the Statewide Guardian Ad Litem Office;
- 23 9. The director of the Office of Child Abuse Prevention;

24 and

- 25 10. A superintendent of schools, appointed by the
- 26 Governor; and

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27 11.10. Five members representing children and youth
28 advocacy organizations, who are not service providers and who
29 are appointed by the Governor.

30 Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 591 Newborn Health Screening
SPONSOR(S): Harrell
TIED BILLS: IDEN./SIM. **BILLS:** SB 722

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	13 Y, 0 N	Guzzo	O'Callaghan
2) Health & Human Services Committee		Guzzo 	Calamas 

SUMMARY ANALYSIS

Newborn screening is a preventive public health program that is provided in every state in the United States to identify, diagnose, and manage newborns at risk for selected disorders that, without detection and treatment, can lead to permanent developmental and physical damage or death. The Department of Health (DOH) is responsible for administering the statewide Newborn Screening Program, which conducts screenings for 37 disorders.

Section 383.14(1)(c), F.S., authorizes the State Public Health Laboratory to release, directly or through the Children's Medical Services program, the results of a newborn's hearing and metabolic tests to the newborn's primary care physician.

Section 383.145, F.S., establishes the newborn and infant hearing screening program, which requires licensed hospitals or other state-licensed birthing facilities that provide maternity and newborn care services to screen all newborns, prior to discharge, for the detection of hearing loss. A hearing impairment means a hearing loss of 30 dB HL or greater.

The bill amends s. 383.14(1)(c), F.S., to allow the State Public Health Laboratory to release the results of a newborn's hearing and metabolic tests or screenings to the newborn's health care practitioner. The bill defines health care practitioner, as a physician or physician assistant, osteopathic physician or physician assistant, advanced registered nurse practitioner, registered nurse, licensed practical nurse, midwife, speech-language pathologist or audiologist, or a dietician or nutritionist.

The bill amends s. 383.145(2)(c), F.S., to revise the definition of "hearing impairment" to mean a hearing loss of 16 dB instead of 30 dB.

Finally, the bill amends s. 383.145(3)(i), F.S., and s. 383.145(3)(k), F.S., to delete obsolete language.

The bill does not appear to have a fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Newborn Screening

Newborn screening is a preventive public health program that is provided in every state in the United States. The intent of the Florida Newborn Screening Program (NSP) is to screen all newborns for hearing impairment to identify, diagnose, and manage newborns at risk for selected disorders that, without detection and treatment, can lead to permanent development and physical damage or death. The Department of Health (DOH) is responsible for administering the NSP, which currently screens for 37 disorders.¹

The NSP is a comprehensive system involving coordination among several entities, including the Bureau of Laboratories Newborn Screening Laboratory in Jacksonville, Children's Medical Services (CMS) Newborn Screening Follow-up Program in Tallahassee, and referral centers throughout the state. In addition, the Genetics and Newborn Screening Advisory Council serves as an advisory body to DOH.²

Newborn screening usually takes place before a newborn leaves the hospital. Most tests use a few drops of blood from pricking the baby's heel. The blood specimen is placed on a special filter paper and, in Florida, the specimen card is sent to the DOH Newborn Screening Laboratory in Jacksonville for testing. The laboratory receives about 250,000 specimens annually from babies born in Florida. The majority of the test results are reported within 24-48 hours. The CMS program, within DOH, provides follow-up services for all abnormal screening results.

Newborn Hearing Screening

Newborn hearing screening has been required in Florida since October, 2000.³ Newborn hearing screening services are provided to identify newborns at risk of hearing impairment and to ensure that follow-up audiometric screening, diagnosis, and referral to intervention is provided.⁴

Hospitals and other state-licensed birthing facilities that provide maternity and newborn care services are required to screen all newborns for hearing loss, prior to discharge. However, a parent or legal guardian may sign a waiver to refuse the hearing screening, and a copy of the waiver must be filed in the newborn's medical record.⁵ If screening is not completed before discharge due to scheduling or temporary staffing limitations, or if the newborn fails the screening, the hospital must refer the newborn for screening, which must be conducted within 30 days of discharge.

Any child who is diagnosed as having a hearing impairment must be referred to their primary care physician for medical management, treatment, and follow-up services. Further, any child from birth to 36 months of age who is diagnosed as having a hearing impairment that requires ongoing special hearing services must be referred to the CMS Early Intervention Program (Early Steps). Early Steps is Florida's early intervention system that offers services to eligible infants and toddlers with significant delays or a condition likely to result in a developmental delay. Early intervention is provided to support families and caregivers in developing the competence and confidence to help their child learn and

¹ House Bill 591, Department of Health, Legislative Bill Analysis, January 14, 2014 (on file with Health Quality Subcommittee).

² Section 383.14(5), F.S.

³ Chapter 2000-177, L.O.F., CS/HB 399.

⁴ Sections 391.301-304, F.S., s. 383.14, F.S., and s. 383.145, F.S.

⁵ Section 383.145(3), F.S.

develop. A diagnosis must provide evidence of a hearing loss of 25 dB or greater to be eligible for services provided by the Early Steps Program.⁶

Florida law defines a hearing impairment as a hearing loss of 30 dB HL or greater.⁷

Pursuant to s. 383.14(1)(c), F.S., and notwithstanding any other law to the contrary, the State Public Health Laboratory may release, directly or through the CMS Program, the results of a newborn's hearing and metabolic tests or screening to the newborn's primary care physician.

Effect of Proposed Changes

The bill amends s. 383.14(1)(c), F.S., to allow the State Public Health Laboratory to release the results of a newborn's hearing and metabolic tests or screenings to the newborn's health care practitioner, not just the newborn's physician. For purposes of this section, the bill defines "health care practitioner", as a physician or physician assistant, osteopathic physician or physician assistant, advanced registered nurse practitioner, registered nurse, licensed practical nurse, midwife, speech-language pathologist or audiologist, or a dietician or nutritionist.

The bill amends s. 383.145(2)(c), F.S., to revise the definition of "hearing impairment" to mean a hearing loss of 16 dB instead of 30 dB. This change will align with industry standards for the definition of "hearing impairment".⁸ This change is not expected to impact eligibility for services provided under Medicaid or Early Steps, since these programs have their own eligibility criteria. Medicaid's hearing loss criteria is 40 dB or greater. To be eligible for Early Steps services, a child from birth to 36 months of age must be diagnosed as having a hearing impairment that requires ongoing special hearing services. Currently, pursuant to guidelines established by the Florida Early Hearing Loss Detection and Intervention Advisory Council (Council), children with a hearing loss of less than 25 dB do not qualify for Early Steps services.⁹ Therefore, changing the definition of "hearing impairment" by lowering the hearing loss threshold from 30 dB to 16 dB, will have no effect on eligibility for Early Steps services. However, it is possible that the council could change their guidelines to align with the 16 dB threshold provision of the bill.

Finally, the bill amends s. 383.145(3)(i), F.S., and s. 383.145(3)(k), F.S., to delete obsolete and out of date language.

B. SECTION DIRECTORY:

Section 1: Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.

Section 2: Amends s. 383.145, F.S., relating to newborn and infant hearing screening.

Section 3: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁶ Florida Newborn Screening Guidelines 2012, Department of Health, Children's Medical Services, at page 51, available at <http://www.floridahealth.gov/healthy-people-and-families/childrens-health/newborn-screening/> (last visited February 17, 2014).

⁷ Section 383.14(1)(c), F.S.

⁸ The American Speech-Language-Hearing Association changed the lower range of hearing loss to 16 dB in 2011, available at <http://www.asha.org/uploadedFiles/AIS-Hearing-Loss-Types-Degree-Configuration.pdf> (last visited February 17, 2014).

⁹ House Bill 591, Department of Health, Legislative Bill Analysis, January 14, 2014 (on file with Health Quality Subcommittee).

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This 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

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A bill to be entitled
 An act relating to newborn health screening; amending
 s. 383.14, F.S.; authorizing the State Public Health
 Laboratory to release the results of a newborn's
 hearing and metabolic tests or screenings to the
 newborn's health care practitioner; defining the term
 "health care practitioner" as it relates to such
 release; amending s. 383.145, F.S.; revising the
 definition of the term "hearing impairment"; updating
 a cross-reference; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section
 383.14, Florida Statutes, is amended to read:

383.14 Screening for metabolic disorders, other hereditary
 and congenital disorders, and environmental risk factors.—

(1) SCREENING REQUIREMENTS.—To help ensure access to the
 maternal and child health care system, the Department of Health
 shall promote the screening of all newborns born in Florida for
 metabolic, hereditary, and congenital disorders known to result
 in significant impairment of health or intellect, as screening
 programs accepted by current medical practice become available
 and practical in the judgment of the department. The department
 shall also promote the identification and screening of all
 newborns in this state and their families for environmental risk

27 factors such as low income, poor education, maternal and family
 28 stress, emotional instability, substance abuse, and other high-
 29 risk conditions associated with increased risk of infant
 30 mortality and morbidity to provide early intervention,
 31 remediation, and prevention services, including, but not limited
 32 to, parent support and training programs, home visitation, and
 33 case management. Identification, perinatal screening, and
 34 intervention efforts shall begin prior to and immediately
 35 following the birth of the child by the attending health care
 36 provider. Such efforts shall be conducted in hospitals,
 37 perinatal centers, county health departments, school health
 38 programs that provide prenatal care, and birthing centers, and
 39 reported to the Office of Vital Statistics.

40 (c) Release of screening results.—Notwithstanding any
 41 ~~other~~ law to the contrary, the State Public Health Laboratory
 42 may release, directly or through the Children's Medical Services
 43 program, the results of a newborn's hearing and metabolic tests
 44 or screenings ~~screening~~ to the newborn's health care
 45 practitioner. As used in this paragraph, the term "health care
 46 practitioner" means a physician or physician assistant licensed
 47 under chapter 458; an osteopathic physician or physician
 48 assistant licensed under chapter 459; an advanced registered
 49 nurse practitioner, registered nurse, or licensed practical
 50 nurse licensed under part I of chapter 464; a midwife licensed
 51 under chapter 467; a speech-language pathologist or audiologist
 52 licensed under part I of chapter 468; or a dietician or

53 nutritionist licensed under part X of chapter 468 ~~primary care~~
 54 ~~physician.~~

55 Section 2. Paragraph (c) of subsection (2) and paragraphs
 56 (i) and (k) of subsection (3) of section 383.145, Florida
 57 Statutes, are amended, to read:

58 383.145 Newborn and infant hearing screening.—

59 (2) DEFINITIONS.—

60 (c) "Hearing impairment" means a hearing loss of 16 ~~30~~ dB
 61 HL or greater in the frequency region important for speech
 62 recognition and comprehension in one or both ears, approximately
 63 500 through 4,000 hertz.

64 (3) REQUIREMENTS FOR SCREENING OF NEWBORNS; INSURANCE
 65 COVERAGE; REFERRAL FOR ONGOING SERVICES.—

66 (i) ~~By October 1, 2000,~~ Newborn hearing screening must be
 67 conducted on all newborns in hospitals in this state on birth
 68 admission. When a newborn is delivered in a facility other than
 69 a hospital, the parents must be instructed on the importance of
 70 having the hearing screening performed and must be given
 71 information to assist them in having the screening performed
 72 within 3 months after the child's birth.

73 (k) A ~~Any~~ child who is diagnosed as having a permanent
 74 hearing impairment shall be referred to the primary care
 75 physician for medical management, treatment, and followup
 76 services. Furthermore, in accordance with Part C of the
 77 Individuals with Disabilities Education Act, Pub. L. No. 108-446
 78 105-17, Infants and Toddlers with Disabilities ~~The Infants and~~

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79 ~~Toddlers Program, Individuals with Disabilities Education Act,~~
80 any child from birth to 36 months of age who is diagnosed as
81 having a hearing impairment that requires ongoing special
82 hearing services must be referred to the Children's Medical
83 Services Early Intervention Program serving the geographical
84 area in which the child resides.

85 Section 3. 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 & Human Services
 2 Committee
 3 Representative Harrell offered the following:

Amendment (with title amendment)

Remove lines 55-63 and insert:

7 Section 2. Subsection (3) of section 383.145, Florida
 8 Statutes, is amended to read:
 9 383.145 Newborn and infant hearing screening.-

13 -----
 14 **T I T L E A M E N D M E N T**

15 Remove lines 8-9 and insert:
 16 release; amending s. 383.145, F.S.; updating
 17



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 & Human Services
 2 Committee
 3 Representative Harrell offered the following:

Amendment (with title amendment)

Between lines 84 and 85, insert:

7 Section 3. Section 383.146, Florida Statutes, is created
8 to read:

9 383.146 Infants and toddlers who are deaf or hard of
10 hearing; notice of service providers.-

11 (1) At the time that an audiologist diagnoses an infant or
 12 toddler as having a permanent hearing impairment, the
 13 audiologist or their designee shall ask the child's parent or
 14 legal guardian if he or she would like to provide contact
 15 information to receive direct correspondence from qualified
 16 Early Steps providers that offer early intervention services and
 17 who specialize in serving children with hearing loss. A parent



Amendment No. 2

18 or legal guardian shall authorize the release of the contact
19 information by signing a consent form.

20 (2) The department shall post on its website a list of
21 qualified Early Steps providers of early intervention services
22 who specialize in serving children with hearing loss and who
23 have notified the department of their interest to provide direct
24 communication to families who wish to receive information about
25 the services that they provide.

26 (3) The audiologist or designee shall send by secure
27 transmission the consent form to those providers listed on the
28 department's website.

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

Remove line 10 and insert:

a cross-reference; creating s. 383.146, F.S.; requiring an audiologist to provide an opportunity for the parent or legal guardian of an infant or toddler who is diagnosed with a permanent hearing impairment to provide contact information so that he or she may receive information directly from specified service providers; requiring the Department of Health to post a list of certain service providers and institutions; requiring the audiologist to transmit the information; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 323 Pharmacy Technicians
SPONSOR(S): La Rosa
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	8 Y, 4 N	Guzzo	O'Callaghan
2) Health & Human Services Committee		Guzzo <i>AG</i>	Calamas <i>EC</i>

SUMMARY ANALYSIS

Currently, Florida's laws prohibit a licensed pharmacist from supervising more than one registered pharmacy technician, unless the Department of Health's (DOH) Board of Pharmacy (Board) determines the pharmacy meets certain guidelines and authorizes the licensed pharmacist to supervise more than one, but not more than three, pharmacy technicians.

The bill increases the number of registered pharmacy technicians a licensed pharmacist may supervise to six. Additional registered pharmacy technicians may be supervised if permitted by guidelines adopted by the Board.

The bill requires, for a written prescription for a controlled substance, the date on the prescription to be written legibly and in a certain numeric format.

The bill has an indeterminate, insignificant fiscal impact on DOH.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Pharmacist and Pharmacy Technician Workforce Demand

Pharmacy technicians assist, and work under the supervision of, licensed pharmacists. Their duties may include dispensing, measuring, or compounding medications; taking information needed to fill a prescription; packaging and labeling prescriptions; accepting payment for prescriptions; answering phones; or referring patients with questions to the pharmacist. Ultimately, the pharmacist reviews all prescriptions. Some reports suggest that the utilization of educated and certified pharmacy technicians allows pharmacists to focus more on direct patient care.¹

Factors that contribute to a high demand for pharmacists and pharmacy technicians include:

- Increased use of prescription medications and the number of prescription medications available;
- Market growth and competition among retail pharmacies resulting in increased job openings and expanded store hours;
- The aging of the U.S. population; and
- An increase in time spent on non-patient care activities, such as office administration.²

Employment of pharmacy technicians in the U.S. has been projected by the U.S. Department of Labor, Bureau of Labor Statistics to increase by 20% between 2012 and 2022.³

As of 2009, Florida was among 18 states allowing a maximum 1:3 pharmacist-to-pharmacy technician ratio.⁴ Seventeen states and the District of Columbia had no ratio limits; 8 states allowed a maximum 1:2 pharmacist-to-pharmacy technician ratio; 7 states allowed a 1:4 ratio; and 1 state allowed a 1:1 ratio. More recently, Indiana and Idaho have allowed a 1:6 ratio.⁵ Some states require that higher

¹ See "ASHP Long-Range Vision for the Pharmacy Work Force in Hospitals and Health Systems: Ensuring the Best Use of Medicines in Hospitals and Health Systems," *American Journal of Health-System Pharmacy*, 64(12):1320-1330, June 15, 2007, available at: www.ashp.org/DocLibrary/BestPractices/HRRptWorkForceVision.aspx (visited January 30, 2014); "White Paper on Pharmacy Technicians 2002: Needed changes can no longer wait," *American Journal of Health-System Pharmacy*, 60(1): 37-51, January 1, 2003, available at: www.acpe-accredit.org/pdf/whitePaper.pdf (last visited January 30, 2014); and "The Adequacy of Pharmacist Supply: 2004 to 2030," Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Professions, December 2008, available at: bhpr.hrsa.gov/healthworkforce/reports/pharmsupply20042030.pdf (last visited January 30, 2014).

² "The Pharmacist Workforce, A Study of the Supply and Demand for Pharmacists," Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Professions, December 2000, available at: bhpr.hrsa.gov/healthworkforce/reports/pharmaciststudy.pdf (last visited January 30, 2014).

³ Occupational Outlook Handbook: Pharmacy Technicians, Bureau of Labor Statistics, U.S. Department of Labor, available at: <http://www.bls.gov/ooh/healthcare/pharmacy-technicians.htm> (last visited January 30, 2014).

⁴ Presentation by Kevin N. Nicholson, RPh, JD; National Association of Chain Drug Stores, "Standardized Pharmacy Technician Education and Training," May 2009, available at [http://www.nabp.net/events/assets/AnnualIMtgTechTrainStd\(Nicholson\).pdf](http://www.nabp.net/events/assets/AnnualIMtgTechTrainStd(Nicholson).pdf) (last visited February 3, 2014).

⁵ Indiana changed its ratio July 2, 2012. See Indiana Code, 25-26-13-18. See also, Idaho Board of Pharmacy Rule 251, Pharmacy Technicians.

ratios are contingent on certification or licensure of technicians, or other quality assurance measures.⁶

According to the October 2013 Aggregate Demand Index compiled by the Pharmacy Manpower Project, Inc., Florida has a ranking of 2.86, meaning Florida does not have a shortage of pharmacists. Specifically, this ranking falls between “demand is less than the pharmacist supply available” and “demand is in balance with supply.”⁷

In January 2014, there were approximately 2,149 unemployed pharmacy technicians, and approximately 1,135 publicly advertised job openings for pharmacy technicians in Florida, meaning Florida had an oversupply of pharmacy technicians by approximately 1,083 in the month of January.⁸

Pharmacy Technicians in Florida

In 2008, the Florida Legislature passed CS/CS 1360, which amended s. 465.014, F.S., to require pharmacy technician applicants to complete a pharmacy technician training program to become a registered pharmacy technician. The new law also required the direct supervision of a registered pharmacy technician by a licensed pharmacist.⁹ Prior to this time, pharmacies and pharmacists trained pharmacy technicians, and there were no statutory limits on the number of pharmacy technicians a pharmacist may supervise.

Section 465.014, F.S., authorizes a licensed pharmacist to delegate to registered pharmacy technicians those duties, tasks, and functions that do not fall within the definition of the practice of the profession of pharmacy. Registered pharmacy technicians' responsibilities include:¹⁰

- Retrieval of prescription files;
- Data entry;
- Label preparation;
- Counting, weighing, measuring, pouring, and mixing prescription medication;
- Initiation of communication with a prescribing practitioner or medical staff regarding requests for prescription refill authorization, clarification of missing information on prescriptions, and confirmation of information such as names, medication, and strength; and
- Acceptance of authorization for prescription renewals.

The Board¹¹ specifies by rule¹² certain acts that pharmacy technicians are prohibited from performing. Those acts include:

- Receiving new verbal prescriptions or any change in the medication, strength, or directions;

⁶ See National Association of Boards of Pharmacy: Kansas News: Pharmacy Technician Ratio (2006), Minnesota Board of Pharmacy (2000), Idaho State Board of Pharmacy News (2009), available at: <http://www.nabp.net/> (last visited January 30, 2014).

⁷ Aggregate Demand Index, Supported by Pharmacy Manpower Project Inc., available at: <http://www.pharmacymanpower.com/about.jsp> (last visited January 30, 2014).

⁸ Presentation by Rebecca Rust, Director of the Bureau of Labor Market Statistics of the Florida Department of Economic Opportunity, January 15, 2014, available at: [http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2786&Session=2014&DocumentType=Meeting Packets&FileName=schcwi 1-15-14.pdf](http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2786&Session=2014&DocumentType=Meeting%20Packets&FileName=schcwi%201-15-14.pdf) (last visited February 3, 2014).

⁹ 2008-216, L.O.F.

¹⁰ Rule, 64B16-27.420, F.A.C.

¹¹ The Board of Pharmacy is created under s. 465.004, F.S., and consists of nine members appointed by the Governor and confirmed by the Senate. Seven members are licensed pharmacists, who are Florida residents and who have practiced pharmacy for at least 4 years. The remaining two members are Florida residents who have no connection to the profession of pharmacy.

¹² *Supra* fn. 10.

- Interpreting a prescription or medication order for therapeutic acceptability and appropriateness;
- Conducting a final verification of dosage and directions;
- Engaging in prospective drug review;
- Providing patient counseling;
- Monitoring prescription drug usage; and
- Overriding clinical alerts without first notifying the pharmacist.

All registered pharmacy technicians must identify themselves as registered pharmacy technicians by wearing an identification badge with a designation as a "registered pharmacy technician" and verbally identifying themselves as a registered pharmacy technician over the telephone.¹³

The licensed pharmacist is responsible for acts performed by persons under his or her supervision.¹⁴ Licensed pharmacists may not supervise more than one registered pharmacy technician unless authorized by the Board under guidelines it has established to determine circumstances when a licensed pharmacist may supervise more than one, but not more than three, registered pharmacy technicians.¹⁵ A prescription department manager or consultant pharmacist of record who seeks to have more than one registered pharmacy technician must submit a written request to the Board for approval and demonstrate workflow needs to justify the increased ratio.¹⁶

At the end of the first quarter of Fiscal Year 2013-2014, there were 44,492 registered pharmacy technicians, 31,445 licensed pharmacists, and 9,179 licensed pharmacies in Florida.¹⁷ As of February 2014, 4,436 Florida licensed pharmacies had a ratio of three pharmacy technicians to one pharmacist, and 580 pharmacies had a ratio of two pharmacy technicians to one pharmacist.¹⁸

Prescriptions

Section 893.04, F.S., authorizes a pharmacist, in good faith and in the course of professional practice, to dispense a controlled substance upon written or oral prescription. An oral prescription must be promptly reduced to writing by the pharmacist. The written prescription must be dated and signed by the prescribing practitioner on the date issued. The face of the prescription or written record for the controlled substance must include:¹⁹

- The full name and address of the person for whom the controlled substance is dispensed;
- The full name and address of the prescribing practitioner and the prescriber's federal controlled substance registry number;
- The name of the controlled substance prescribed and the strength, quantity, and directions for the use thereof;
- The number of the prescription, as recorded in the prescription files of the pharmacy in which it is filled; and
- The initials of the pharmacist filling the prescription and the date filled.

¹³ *Id.*

¹⁴ Rule 64B16-27.1001(7), F.A.C.

¹⁵ Section 465.014, F.S.

¹⁶ The brief description of workflow needs must include the operating hours of the pharmacy and the number of pharmacists, registered interns, and registered pharmacy technicians employed by the pharmacy. Rule 64B16-27.410, F.A.C.

¹⁷ Department of Health, Bill Analysis of HB 323, January 31, 2014, on file with committee staff.

¹⁸ *Id.*

¹⁹ Section 893.04(1), F.S.

Further, each written prescription for a controlled substance listed in Schedules II, III, or IV, must include both a written and a numerical notation of the quantity of the controlled substance prescribed and a notation of the date with the abbreviated month written out.²⁰

Effect of Proposed Changes

Section 465.014, F.S., prohibits a licensed pharmacist from supervising more than one registered pharmacy technician, unless the Board determines the pharmacy meets certain guidelines and authorizes the licensed pharmacist to supervise more than one, but not more than three, pharmacy technicians.

The bill increases the number of registered pharmacy technicians a licensed pharmacist may supervise to six. Additional registered pharmacy technicians may be supervised if permitted by guidelines adopted by the Board.

The bill amends s. 893.04(2)(d), F.S., to require, for a written prescription for a controlled substance, the date on the prescription to be written legibly and in a numeric month/day/year format.

B. SECTION DIRECTORY:

Section 1: Amends s. 465.014, F.S., relating to pharmacy technicians.

Section 2: Amends s. 456.42, F.S., relating to written prescriptions for medicinal drugs.

Section 3: Amends s. 893.04, F.S., relating to pharmacist and practitioner.

Section 4: 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:

The bill will have an indeterminate, insignificant impact on DOH, associated with the cost of rule-making.²¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²⁰ Section 893.04(2)(d), F.S.

²¹ *Supra* fn. 17.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This 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

1 A bill to be entitled
 2 An act relating to pharmacy technicians; amending s.
 3 465.014, F.S.; revising the number of registered
 4 pharmacy technicians that a pharmacist may supervise;
 5 amending ss. 456.42 and 893.04, F.S.; requiring
 6 written prescriptions for specified controlled
 7 substances to be legibly dated in a specified format;
 8 providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (1) of section 465.014, Florida
 13 Statutes, is amended to read:

14 465.014 Pharmacy technician.-

15 (1) A person other than a licensed pharmacist or pharmacy
 16 intern may not engage in the practice of the profession of
 17 pharmacy, except that a licensed pharmacist may delegate to
 18 pharmacy technicians who are registered pursuant to this section
 19 those duties, tasks, and functions that do not fall within the
 20 purview of s. 465.003(13). All such delegated acts shall be
 21 performed under the direct supervision of a licensed pharmacist
 22 who shall be responsible for all such acts performed by persons
 23 under his or her supervision. A registered pharmacy ~~registered~~
 24 technician, under the supervision of a pharmacist, may initiate
 25 or receive communications with a practitioner or his or her
 26 agent, on behalf of a patient, regarding refill authorization

27 requests. A licensed pharmacist may not supervise more than six
 28 ~~one~~ registered pharmacy technicians ~~technician~~ unless otherwise
 29 permitted by the guidelines adopted by the board. ~~The board~~
 30 ~~shall establish guidelines to be followed by licensees or~~
 31 ~~permittees in determining the circumstances under which a~~
 32 ~~licensed pharmacist may supervise more than one but not more~~
 33 ~~than three pharmacy technicians.~~

34 Section 2. Subsection (2) of section 456.42, Florida
 35 Statutes, is amended to read:

36 456.42 Written prescriptions for medicinal drugs.—

37 (2) A written prescription for a controlled substance
 38 listed in chapter 893 must have the quantity of the drug
 39 prescribed in both textual and numerical formats, must be
 40 legibly dated on the face of the prescription in numeric
 41 month/day/year format or with the abbreviated month written out
 42 ~~on the face of the prescription~~, and must be either written on a
 43 standardized counterfeit-proof prescription pad produced by a
 44 vendor approved by the department or electronically prescribed
 45 as that term is used in s. 408.0611. As a condition of being an
 46 approved vendor, a prescription pad vendor must submit a monthly
 47 report to the department that ~~which~~, at a minimum, documents the
 48 number of prescription pads sold and identifies the purchasers.
 49 The department may, by rule, require the reporting of additional
 50 information.

51 Section 3. Paragraph (d) of subsection (2) of section
 52 893.04, Florida Statutes, is amended to read:

53 893.04 Pharmacist and practitioner.—
 54 (2)
 55 (d) Each written prescription prescribed by a practitioner
 56 in this state for a controlled substance listed in Schedule II,
 57 Schedule III, or Schedule IV must include on the face of the
 58 prescription both a written and a numerical notation of the
 59 quantity of the controlled substance prescribed ~~on the face of~~
 60 ~~the prescription~~ and a legible notation of the date in numeric
 61 month/day/year format or~~7~~ with the abbreviated month written out
 62 ~~on the face of the prescription~~. A pharmacist may, upon
 63 verification by the prescriber, document any information
 64 required by this paragraph. If the prescriber is not available
 65 to verify a prescription, the pharmacist may dispense the
 66 controlled substance but may insist that the person to whom the
 67 controlled substance is dispensed provide valid photographic
 68 identification. If a prescription includes a numerical notation
 69 of the quantity of the controlled substance or date, but does
 70 not include the quantity or date written out in textual format,
 71 the pharmacist may dispense the controlled substance without
 72 verification by the prescriber of the quantity or date if the
 73 pharmacy previously dispensed another prescription for the
 74 person to whom the prescription was written.
 75 Section 4. This act shall take effect July 1, 2014.