

## Committee Substitute for Senate Bill No. 1922

An act relating to the State Long-Term Care Ombudsman Program; amending s. 400.0060, F.S.; providing and revising definitions; amending s. 400.0061, F.S.; revising legislative findings and intent; amending s. 400.0063, F.S.; revising provisions relating to qualifications of the State Long-Term Care Ombudsman; revising duties of the legal advocate; amending s. 400.0065, F.S.; revising duties and responsibilities of the State Long-Term Care Ombudsman; requiring an annual report; deleting provisions relating to conflict of interest; repealing s. 400.0066, F.S., relating to the Office of State Long-Term Care Ombudsman and departments of state government; amending s. 400.0067, F.S.; revising duties and membership of the State Long-Term Care Ombudsman Council; providing for election of a local council member from each local council to provide representation on the state council; authorizing the Secretary of Elderly Affairs to recommend to the Governor appointments for at-large positions on the state council; providing conditions for removal of members of and for filling vacancies on the state council; providing for election of officers and meetings; providing for per diem and travel expenses if approved by the ombudsman; deleting provisions relating to conflicts of interest and requests for appropriations; amending s. 400.0069, F.S.; authorizing the State Long-Term Care Ombudsman to designate and direct local long-term care ombudsman councils; requiring approval by the Secretary of Elderly Affairs of jurisdictional boundaries designated by the ombudsman; revising duties of local long-term care ombudsman councils; providing requirements and application for membership, election of officers, and meetings of local long-term care ombudsman councils; providing conditions for removal of members; providing for travel expenses for members of the council; deleting provisions relating to conflicts of interest; creating s. 400.0070, F.S.; consolidating provisions relating to conflicts of interest of the ombudsman; providing rulemaking authority to the Department of Elderly Affairs regarding conflicts of interest; amending s. 400.0071, F.S.; requiring rules for receiving, investigating, and assessing complaints against long-term care facilities; deleting provisions requiring the posting and distribution of copies of such procedures; amending s. 400.0073, F.S.; providing conditions for investigations of complaints by state and local ombudsman councils; providing that refusing to allow the ombudsman or a member of a state or local council to enter a long-term care facility is a violation of ch. 400, F.S., under certain circumstances; deleting conditions for onsite administrative inspections; creating s. 400.0074, F.S.; providing conditions and requirements for onsite administrative assessments of nursing homes, assisted living facilities, and adult family-care homes; prohibiting forcible entry of long-term care facilities; providing that refusing to allow the ombudsman or a member of a state or local council to enter a long-term care facility is a violation of ch. 400, F.S., under certain circumstances; amending s. 400.0075, F.S.; providing complaint notification procedures for state

and local councils; providing circumstances in which information relating to violations by a long-term care facility is provided to a local law enforcement agency; amending s. 400.0078, F.S.; requiring information relating to the State Long-Term Care Ombudsman Program to be provided to residents of long-term care facilities or their representatives; amending s. 400.0079, F.S.; providing for immunity from liability for certain persons; amending s. 400.0081, F.S.; requiring long-term care facilities to provide the Office of State Long-Term Care Ombudsman and state and local councils and their members with access to the facility and the records and residents of the facility; authorizing rather than requiring the department to adopt rules regarding access to facilities, records, and residents; amending s. 400.0083, F.S.; prohibiting certain actions against persons who file complaints; providing penalties; repealing s. 400.0085, F.S., relating to a penalty; amending s. 400.0087, F.S.; providing for oversight by and responsibilities of the department; requiring the department to provide certain funding for the State Long-Term Care Ombudsman Program; amending s. 400.0089, F.S.; requiring the office to maintain a data reporting system relating to complaints about and conditions in long-term care facilities and to residents therein; requiring the office to publish and include certain information in its annual report; amending s. 400.0091, F.S.; providing for training of employees of the office and members of the state and local councils; requiring the ombudsman to approve the curriculum and providing contents thereof; requiring certification of employees by the ombudsman; providing an effective date.

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

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

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

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

~~(2)~~(4) “Agency” means the Agency for Health Care Administration.

(3) “Department” means the Department of Elderly Affairs.

(4) “Local council” means a local long-term care ombudsman council designated by the ombudsman pursuant to s. 400.0069. Local councils are also known as district long-term care ombudsman councils or district councils.

~~(5)~~(2) “Long-term care facility” means a skilled nursing home facility, ~~nursing facility~~, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility center.

~~(6)~~(3) “Office” means the Office of State Long-Term Care Ombudsman created by s. 400.0063.

(7)(4) “Ombudsman” means the individual appointed by the Secretary of Elderly Affairs designated to head the Office of State Long-Term Care Ombudsman.

(8)(5) “Resident” means an individual 60 years of age or older who resides in a long-term care facility.

(9)(6) “Secretary” means the Secretary of Elderly Affairs.

(10) “State council” means the State Long-Term Care Ombudsman Council created by s. 400.0067.

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

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

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

(2) It is the intent of the Legislature, therefore, to utilize voluntary citizen ombudsman councils under the leadership of the ombudsman, and through them to operate an ombudsman program which shall, without interference by any executive agency, undertake to discover, investigate, and determine the presence of conditions or individuals which constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. To ensure that the effectiveness and efficiency of such investigations are not impeded by advance notice or delay, the Legislature intends that the ombudsman and ombudsman councils and their designated representatives not be required to obtain warrants in order to enter into or conduct investigations or onsite administrative assessments inspections of long-term care facilities. It is the further intent of the Legislature that the environment in long-term care facilities ~~shall~~ be conducive to the dignity and independence of residents and that investigations by ombudsman councils shall further the enforcement of laws, rules, and regulations that safeguard the health, safety, and welfare of residents.

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

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

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

(2)(a) The Office of State Long-Term Care Ombudsman shall be headed by the State Long-Term Care Ombudsman, who shall ~~have expertise and experience in the fields of long-term care and advocacy, who shall serve on a full-time basis and shall personally, or through representatives of the office, carry out the purposes and functions of the office of State Long-Term Care Ombudsman~~ in accordance with state and federal law.

(b) ~~The State Long-Term Care ombudsman shall be appointed by and shall serve at the pleasure of the Secretary of Elderly Affairs. The secretary shall appoint a person who has expertise and experience in the fields of long-term care and advocacy to serve as ombudsman. No person who has a conflict of interest, or has an immediate family member who has a conflict of interest, may be involved in the designation of the ombudsman.~~

(3)(a) ~~There is created in the office of State Long-Term Care Ombudsman the position of legal advocate, who shall be selected by and serve at the pleasure of the ombudsman, and who shall be a member in good standing of The Florida Bar.~~

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

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

2. Assisting the state and local ~~ombudsman~~ councils in carrying out their responsibilities under this part.

3. Pursuing administrative, initiating and prosecuting legal, and other appropriate remedies on behalf of equitable actions to enforce the rights of long-term care facility residents as defined in this chapter.

4. Serving as legal counsel to the state and local ~~ombudsman~~ councils, or individual members thereof, against whom any suit or other legal action is initiated in connection with the performance of the official duties of the councils or an individual member.

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

400.0065 State Long-Term Care Ombudsman; duties and responsibilities; ~~conflict of interest.~~—

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

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

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

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

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

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

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

(f) ~~Administer the Provide administrative and technical assistance to state and local ombudsman councils.~~

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

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

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

(a) ~~Establish and coordinate Assist and support the efforts of the State Long-Term Care Ombudsman Council in the establishment and coordination of local ombudsman councils throughout the state.~~

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

(c) Within the limits of appropriated federal and state funding ~~authorized and appropriated~~, employ such personnel, ~~including staff for local ombudsman councils~~, as are necessary to perform adequately the functions of the office and provide or contract for legal services to assist the state and local ~~ombudsman~~ councils in the performance of their duties. Staff positions established for the purpose of coordinating the activities of ~~for~~ each local ~~ombudsman council and assisting its members may be established as career service positions, and shall be filled by the ombudsman after approval by the secretary. Notwithstanding any other provision of this part, upon certification by the ombudsman that the staff member hired to fill any such position has completed the initial training required under s. 400.0091, such person~~

shall be considered a representative of the State Long-Term Care Ombudsman Program for purposes of this part.

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

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

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

(g) Enter into a cooperative agreement with the Statewide Advocacy Council ~~and district human rights advocacy committees~~ for the purpose of coordinating and avoiding duplication of advocacy services provided to residents of long-term care facilities.

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

(i) Prepare an annual report describing the activities carried out by the office, the state council, and the local councils in the year for which the report is prepared. The ombudsman shall submit the report to the secretary at least 30 days before the convening of the regular session of the Legislature. The secretary shall in turn submit the report to the United States Assistant Secretary for Aging, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of Children and Family Services, and the Secretary of Health Care Administration. The report shall, at a minimum:

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

2. Evaluate the problems experienced by residents.

3. Analyze the successes of the ombudsman program during the preceding year, including an assessment of how successfully the program has carried out its responsibilities under the Older Americans Act.

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

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

6. Contain any relevant recommendations from the local councils regarding program functions and activities.

~~(3) The State Long-Term Care Ombudsman shall not:~~

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

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

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

~~The Department of Elderly Affairs shall adopt rules to establish procedures to identify and eliminate conflicts of interest as described in this subsection.~~

Section 5. Section 400.0066, Florida Statutes, is repealed.

Section 6. Section 400.0067, Florida Statutes, is amended to read:

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

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

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

(a) Serve as an advisory body to assist the ombudsman in reaching a consensus among local ombudsman councils on issues affecting residents and impacting the optimal operation of the program of statewide concern.

(b) Serve as an appellate body in receiving from the local ombudsman councils complaints not resolved at the local level. Any individual member or members of the state ombudsman council may enter any long-term care facility involved in an appeal, pursuant to the conditions specified in s. 400.0074(2) 400.0069(3).

(c) Assist the ombudsman to discover, investigate, and determine the existence of abuse or neglect in any long-term care facility, and work with the adult protective services program as required in ss. 415.101-415.113. The Department of Elderly Affairs shall develop procedures relating to such investigations. Investigations may consist, in part, of one or more onsite administrative inspections.

(d) Assist the ombudsman in eliciting, receiving, responding to, and resolving complaints made by or on behalf of long-term care facility residents and in developing procedures relating to the receipt and resolution of such complaints. The secretary shall approve all such procedures.

(e) Elicit and coordinate state, local, and voluntary organizational assistance for the purpose of improving the care received by residents of a long-term care facility.

(f) ~~Assist the ombudsman in preparing the annual report described in s. 400.0065. Prepare an annual report describing the activities carried out by the ombudsman and the State Long-Term Care Ombudsman Council in the year for which the report is prepared. The State Long-Term Care Ombudsman Council shall submit the report to the Secretary of Elderly Affairs. The secretary shall in turn submit the report to the Commissioner of the United States Administration on Aging, the Governor, the President of the Senate, the Speaker of the House of Representatives, the minority leaders of the House and Senate, the chairpersons of appropriate House and Senate committees, the Secretary of Children and Family Services, and the Secretary of Health Care Administration. The report shall be submitted by the Secretary of Elderly Affairs at least 30 days before the convening of the regular session of the Legislature and shall, at a minimum:~~

1.—~~Contain and analyze data collected concerning complaints about and conditions in long-term care facilities.~~

2.—~~Evaluate the problems experienced by residents of long-term care facilities.~~

3.—~~Contain recommendations for improving the quality of life of the residents and for protecting the health, safety, welfare, and rights of the residents.~~

4.—~~Analyze the success of the ombudsman program during the preceding year and identify the barriers that prevent the optimal operation of the program. The report of the program's successes shall also address the relationship between the state long-term care ombudsman program, the Department of Elderly Affairs, the Agency for Health Care Administration, and the Department of Children and Family Services, and an assessment of how successfully the state long-term care ombudsman program has carried out its responsibilities under the Older Americans Act.~~

5.—~~Provide policy and regulatory and legislative recommendations to solve identified problems; resolve residents' complaints; improve the quality of care and life of the residents; protect the health, safety, welfare, and rights of the residents; and remove the barriers to the optimal operation of the state long-term care ombudsman program.~~

6.—~~Contain recommendations from the local ombudsman councils regarding program functions and activities.~~

7.—~~Include a report on the activities of the legal advocate and other legal advocates acting on behalf of the local and state councils.~~

(3)(a) The State Long-Term Care Ombudsman Council shall be composed of one active local council member elected ~~designated~~ by each local council plus three at-large members ~~persons~~ appointed by the Governor.



(a) Each local council shall elect by majority vote a representative from among the council members to represent the interests of the local council on the state council. A local council chair may not serve as the representative of the local council on the state council.

(b)1. The secretary, after consulting ombudsman, in consultation with the ombudsman secretary, shall submit to the Governor a list of persons recommended for appointment to the at-large positions on the state council. The list shall not include the name of any person who is currently at least eight names of persons who are not serving on a local council.

2. The Governor shall appoint three at-large members chosen from the list, at least one of whom must be over 60 years of age.

3. If the Governor does not appoint an at-large member to fill a vacant position Governor's appointments are not made within 60 days after the ombudsman submits the list is submitted, the secretary, after consulting with the ombudsman, in consultation with the secretary, shall appoint an at-large member to fill that vacant position three members, one of whom must be over 60 years of age.

(c)1. All state council members shall be appointed to serve 3-year terms.

2. A member of the state Long-Term Care Ombudsman council may not serve more than two consecutive terms.

3. A local council may recommend removal of its elected representative from the state council by a majority vote. If the council votes to remove its representative, the local council chair shall immediately notify the ombudsman. The secretary shall advise the Governor of the local council's vote upon receiving notice from the ombudsman. Any vacancy shall be filled in the same manner as the original appointment.

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

5. Any vacancy on the state council shall be filled in the same manner as the original appointment.

(d)1. The state ombudsman council shall elect a chair to serve for a term of 1 year. A chair may not serve more than two consecutive terms chairperson for a term of 1 year from among the members who have served for at least 1 year.

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

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

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

(e)1. The state ombudsman council shall meet upon the call of the chair or upon the call of the ombudsman. The council shall meet chairperson, at least quarterly but may meet or more frequently as needed.

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

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

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

~~(4) No officer, employee, or representative of the Office of State Long-Term Care Ombudsman or of the State Long-Term Care Ombudsman Council, nor any member of the immediate family of such officer, employee, or representative, may have a conflict of interest. The ombudsman shall adopt rules to identify and remove conflicts of interest.~~

~~(5) The Department of Elderly Affairs shall make a separate and distinct request for an appropriation for all expenses for the state and local ombudsman councils.~~

Section 7. Section 400.0069, Florida Statutes, is amended to read:

400.0069 Local long-term care ombudsman councils; duties; membership.—

(1)(a) The ombudsman shall designate local long-term care ombudsman councils to carry out the duties of the State Long-Term Care Ombudsman Program within local communities. Each local council shall function under the direction of the ombudsman.

(b) The ombudsman shall ensure that there is ~~There shall be~~ at least one local long-term care ombudsman council operating in each of the department's planning and service areas of the Department of Elderly Affairs, which shall function under the direction of the ombudsman and the state ombudsman council. The ombudsman may create additional local councils as necessary to ensure that residents throughout the state have adequate access to State Long-Term Care Ombudsman Program services. The ombudsman, after approval from the secretary, shall designate the jurisdictional boundaries of each local council.

(2) The duties of the local ~~councils~~ ombudsman council are to:

(a) ~~To~~ Serve as a third-party mechanism for protecting the health, safety, welfare, and civil and human rights of residents of a long-term care facility.

(b) ~~To~~ Discover, investigate, and determine the existence of abuse or neglect in any long-term care facility and to use the procedures provided for in ss. 415.101-415.113 when applicable. ~~Investigations may consist, in part, of one or more onsite administrative inspections.~~

(c) ~~To~~ Elicit, receive, investigate, respond to, and resolve complaints made by, or on behalf of, ~~long-term care facility~~ residents.

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

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

(f) Recommend that the ombudsman and the legal advocate ~~To represent the interests of residents before government agencies and to seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.~~

(g) ~~To~~ Carry out other activities that the ombudsman determines to be appropriate.

(3) In order to carry out the duties specified in subsection (2), a member of a ~~the~~ local ~~ombudsman~~ council is authorized, ~~pursuant to ss. 400.19(1) and 400.434,~~ to enter any long-term care facility without notice or first obtaining a warrant, subject to the provisions of s. ~~400.0074(2)~~ 400.0073(5).

(4) Each local ~~ombudsman~~ council shall be composed of members whose primary residence is located within the boundaries of the local council's jurisdiction.

(a) The ombudsman shall strive to ensure that each local council no less than 15 members and no more than 40 members from the local planning and service area, to include the following persons as members:

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

2. At least one registered nurse who has geriatric experience, if possible;

3. At least one licensed pharmacist;

4. At least one registered dietitian;

5. At least six nursing home residents or representative consumer advocates for nursing home residents;
6. At least three residents of assisted living facilities or adult family-care homes or three representative consumer advocates for alternative long-term care facility residents;
7. At least one attorney; and
8. At least one professional social worker.

(b) In no case shall the medical director of a long-term care facility or an employee of the agency for ~~Health Care Administration, the department, the Department of Children and Family Services, or the Agency for Persons with Disabilities Department of Elderly Affairs~~ serve as a member or as an ex officio member of a council. ~~Each member of the council shall certify that neither the council member nor any member of the council member's immediate family has any conflict of interest pursuant to subsection (10). Local ombudsman councils are encouraged to recruit council members who are 60 years of age or older.~~

(5)(a) Individuals wishing to join a local council shall submit an application to the ombudsman. The ombudsman shall review the individual's application and advise the secretary of his or her recommendation for approval or disapproval of the candidate's membership on the local council. If the secretary approves of the individual's membership, the individual shall be appointed as a member of the local council.

(b) The secretary may rescind the ombudsman's approval of a member on a local council at any time. If the secretary rescinds the approval of a member on a local council, the ombudsman shall ensure that the individual is immediately removed from the local council on which he or she serves and the individual may no longer represent the State Long-Term Care Ombudsman Program until the secretary provides his or her approval.

(c) A local council may recommend the removal of one or more of its members by submitting to the ombudsman a resolution adopted by a two-thirds vote of the members of the council stating the name of the member or members recommended for removal and the reasons for the recommendation. If such a recommendation is adopted by a local council, the local council chair or district coordinator shall immediately report the council's recommendation to the ombudsman. The ombudsman shall review the recommendation of the local council and advise the secretary of his or her recommendation regarding removal of the council member or members. All members shall be appointed to serve 3-year terms. Upon expiration of a term and in case of any other vacancy, the council shall select a replacement by majority vote. The ombudsman shall review the selection of the council and recommend approval or disapproval to the Governor. If no action is taken by the Governor to approve or disapprove the replacement of a member within 30 days after the ombudsman has notified the Governor of his or her recommendation, the replacement shall be considered disapproved and the process for selection of a replacement shall be repeated.

~~(6)(a) Each The local ombudsman council shall elect a chair for a term of 1 year. There shall be no limitation on the number of terms that an approved member of a local council may serve as chair from members who have served at least 1 year.~~

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

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

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

~~(7) Each The local ombudsman council shall meet upon the call of its the chair or upon the call of the ombudsman. Each local council shall meet, at least once a month but may meet or more frequently if necessary as needed to handle emergency situations.~~

~~(8) A member of a local ombudsman council shall receive no compensation but shall, with approval from the ombudsman, be reimbursed for travel expenses both within and outside the jurisdiction of the local council county of residence in accordance with the provisions of s. 112.061.~~

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

~~(10) No officer, employee, or representative of a local long-term care ombudsman council, nor any member of the immediate family of such officer, employee, or representative, may have a conflict of interest. The ombudsman shall adopt rules to identify and remove conflicts of interest.~~

Section 8. Section 400.0070, Florida Statutes, is created to read:

400.0070 Conflicts of interest.—

(1) The ombudsman shall not:

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

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

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

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

(3) The department shall define by rule:

(a) Situations that constitute a person having a conflict of interest that could materially affect the objectivity or capacity of a person to serve on an ombudsman council, or as an employee of the office, while carrying out the purposes of the State Long-Term Care Ombudsman Program as specified in this part.

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

Section 9. Section 400.0071, Florida Statutes, is amended to read:

400.0071 State Long-Term Care Ombudsman Program complaint procedures.—

(1) The department state ombudsman council shall adopt rules implementing recommend to the ombudsman and the secretary state and local complaint procedures. The rules must include procedures for:

(1) Receiving complaints against a nursing home or long-term care facility or an its employee of a long-term care facility.

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

(3) Conducting onsite administrative assessments of long-term care facilities. The procedures shall be implemented after the approval of the ombudsman and the secretary.

(2) These procedures shall be posted in full view in every nursing home or long-term care facility. Every resident or representative of a resident shall receive, upon admission to a nursing home or long-term care facility, a printed copy of the procedures of the state and the local ombudsman councils.

Section 10. Section 400.0073, Florida Statutes, is amended to read:

400.0073 State and local ombudsman council investigations.—

(1) A local ombudsman council shall investigate, within a reasonable time after a complaint is made, any complaint of a resident, a or representative of a resident, or any other credible source based on an action or omission by an administrator, an or employee, or a representative of a nursing home or long-term care facility which might be:

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

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

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

(4) If the ombudsman or any state or local council member is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the office, the state council, or the local council in the performance of official duties as described in s. 400.0083(1) and to have committed a violation of this part. The ombudsman shall report a facility's refusal to allow entry to the agency, and the agency shall record the report and take it into consideration when determining actions allowable under s. 400.102, s. 400.121, s. 400.414, s. 400.419, s. 400.6194, or s. 400.6196. In addition to any specific investigation made pursuant to a complaint, the local ombudsman council shall conduct, at least annually, an investigation, which shall consist, in part, of an onsite administrative inspection, of each nursing home or long-term care facility within its jurisdiction. This inspection shall focus on the rights, health, safety, and welfare of the residents.

~~(5) Any onsite administrative inspection conducted by an ombudsman council shall be subject to the following:~~

~~(a) All inspections shall be at times and for durations necessary to produce the information required to carry out the duties of the council.~~

~~(b) No advance notice of an inspection shall be provided to any nursing home or long-term care facility, except that notice of followup inspections on specific problems may be provided.~~

~~(c) Inspections shall be conducted in a manner which will impose no unreasonable burden on nursing homes or long-term care facilities, consistent with the underlying purposes of this part. Unnecessary duplication of efforts among council members or the councils shall be reduced to the extent possible.~~

~~(d) Any ombudsman council member physically present for the inspection shall identify himself or herself and the statutory authority for his or her inspection of the facility.~~

~~(e) Inspections may not unreasonably interfere with the programs and activities of clients within the facility. Ombudsman council members shall respect the rights of residents.~~

~~(f) All inspections shall be limited to compliance with parts II, III, and VII of this chapter and 42 U.S.C. ss. 1396(a) et seq., and any rules or regulations promulgated pursuant to such laws.~~

~~(g) No ombudsman council member shall enter a single-family residential unit within a long-term care facility without the permission of the resident or the representative of the resident.~~

~~(h) Any inspection resulting from a specific complaint made to an ombudsman council concerning a facility shall be conducted within a reasonable time after the complaint is made.~~

~~(6) An inspection may not be accomplished by forcible entry. Refusal of a long-term care facility to allow entry of any ombudsman council member constitutes a violation of part II, part III, or part VII of this chapter.~~

Section 11. Section 400.0074, Florida Statutes, is created to read:

400.0074 Local ombudsman council onsite administrative assessments.—

(1) In addition to any specific investigation conducted pursuant to a complaint, the local council shall conduct, at least annually, an onsite administrative assessment of each nursing home, assisted living facility, and adult family-care home within its jurisdiction. This administrative assessment shall focus on factors affecting the rights, health, safety, and welfare of the residents. Each local council is encouraged to conduct a similar onsite administrative assessment of each additional long-term care facility within its jurisdiction.

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

(a) To the extent possible and reasonable, the administrative assessments shall not duplicate the efforts of the agency surveys and inspections conducted under parts II, III, and VII of this chapter.

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

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



(d) A local council member physically present for the administrative assessment shall identify himself or herself and cite the specific statutory authority for his or her assessment of the facility.

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

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

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

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

(4) An onsite administrative assessment may not be accomplished by forcible entry. However, if the ombudsman or a state or local council member is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the office, the state council, or the local council in the performance of official duties as described in s. 400.0083(1) and to have committed a violation of this part. The ombudsman shall report the refusal by a facility to allow entry to the agency, and the agency shall record the report and take it into consideration when determining actions allowable under s. 400.102, s. 400.121, s. 400.414, s. 400.419, s. 400.6194, or s. 400.6196.

Section 12. Section 400.0075, Florida Statutes, is amended to read:

400.0075 Complaint notification and resolution procedures.—

(1)(a) Any complaint ~~or, including any problem verified identified~~ by an ombudsman council as a result of an investigation ~~or onsite administrative assessment, which complaint or problem is determined to require, deemed valid and requiring~~ remedial action by the local ombudsman council, shall be identified and brought to the attention of the long-term care facility administrator in writing. Upon receipt of such document, the administrator, ~~in concurrence with the concurrence of the local ombudsman council chair,~~ shall establish target dates for taking appropriate remedial action. If, by the target date, the remedial action is not completed or forthcoming, the local ombudsman council chair may, after obtaining approval from the ombudsman and a majority of the members of the local council:

1.(a) Extend the target date if the ~~chair~~ council has reason to believe such action would facilitate the resolution of the complaint.

2.(b) In accordance with s. 400.0077, publicize the complaint, the recommendations of the council, and the response of the long-term care facility.

3.(c) Refer the complaint to the state ~~ombudsman~~ council.

(b) If the local council chair believes that the health, safety, welfare, or rights of the resident are in imminent danger, the chair shall notify the ombudsman or legal advocate, who, after verifying that such imminent danger exists, shall local long-term care ombudsman council may seek immediate legal or administrative remedies to protect the resident.

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

(2)(a) Upon referral from a the local ombudsman council, the state ombudsman council shall assume the responsibility for the disposition of the complaint. If a long-term care facility fails to take action on a complaint found valid by the state ombudsman council, the state council may, after obtaining approval from the ombudsman and a majority of the state council members:

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

2.(b) Recommend to the department and the agency a series of facility reviews pursuant to s. 400.19(4), s. 400.434, or s. 400.619 to ensure assure correction and nonrecurrence of conditions that give rise to complaints against a long-term care facility.

(c) Recommend to the agency changes in rules for inspecting and licensing or certifying long-term care facilities, and recommend to the Agency for Health Care Administration changes in rules for licensing and regulating long-term care facilities.

(d) Refer the complaint to the state attorney for prosecution if there is reason to believe the long-term care facility or its employee is guilty of a criminal act.

3.(e) Recommend to the department and the agency for Health Care Administration that the long-term care facility no longer receive payments under any the state Medical assistance program, including (Medicaid).

4.(f) Recommend to that the department and the agency that initiate procedures be initiated for revocation of the long-term care facility's license in accordance with chapter 120.

(g) Seek legal, administrative, or other remedies to protect the health, safety, welfare, or rights of the resident.

(b) If the state council chair believes that the health, safety, welfare, or rights of the resident are in imminent danger, the chair shall notify the ombudsman or legal advocate, who, after verifying that such imminent danger exists, State Long-Term Care Ombudsman Council shall seek immediate legal or administrative remedies to protect the resident.

(c) If the ombudsman has reason to believe that the long-term care facility or an employee of the facility has committed a criminal act, the ombudsman shall provide local law enforcement with the relevant information to initiate an investigation of the case.

~~(3) The state ombudsman council shall provide, as part of its annual report required pursuant to s. 400.0067(2)(f), information relating to the disposition of all complaints to the Department of Elderly Affairs.~~

Section 13. Section 400.0078, Florida Statutes, is amended to read:

400.0078 Citizen access to State Long-Term Care Ombudsman Program services Statewide toll-free telephone number.—

(1) The office of State Long-Term Care Ombudsman shall establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents nursing facilities.

(2) Every resident or representative of a resident shall receive, upon admission to a long-term care facility, information regarding the purpose of the State Long-Term Care Ombudsman Program, the statewide toll-free telephone number for receiving complaints, and other relevant information regarding how to contact the program. Residents or their representatives must be furnished additional copies of this information upon request.

Section 14. Section 400.0079, Florida Statutes, is amended to read:

400.0079 Immunity.—

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

(2) The ombudsman or any person authorized by the ombudsman to act acting on behalf of the office, as well as all members of State Long-Term Care Ombudsman or the state and or a local councils, long-term care ombudsman council shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed, during the good faith performance of official duties.

Section 15. Section 400.0081, Florida Statutes, is amended to read:

400.0081 Access to facilities, residents, and records.—

(1) A long-term care facility shall provide the office of State Long-Term Care Ombudsman, the state Long-Term Care Ombudsman council and its members, and the local councils and their members long-term care ombudsman councils, or their representatives, shall have access to:

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

(b) Medical and social records of a resident for review as necessary to investigate or resolve a complaint, if:

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

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

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

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

2. The office has reasonable cause to believe that the representative or guardian is not acting in the best interests of the resident; and.

3. The state or local council member representative obtains the approval of the ombudsman.

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

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

~~(2) Notwithstanding paragraph (1)(b), if, pursuant to a complaint investigation by the state ombudsman council or a local ombudsman council, the legal representative of the resident refuses to give permission for the release of the resident's records, and if the Office of State Long-Term Care Ombudsman has reasonable cause to find that the legal representative is not acting in the best interests of the resident, the medical and social records of the resident must be made available to the state or local council as is necessary for the members of the council to investigate the complaint.~~

~~(2)(3) The department of Elderly Affairs, in consultation with the ombudsman and the state Long-Term Care Ombudsman council, may shall adopt rules to establish procedures to ensure access to facilities, residents, and records as described in this section.~~

Section 16. Section 400.0083, Florida Statutes, is amended to read:

400.0083 Interference; retaliation; penalties.—

(1) It shall be unlawful for any person, long-term care facility, or other entity to willfully interfere with a representative of the office of ~~State Long-Term Care Ombudsman~~, the state ~~Long-Term Care Ombudsman~~ council, or a local ~~long-term care ombudsman~~ council in the performance of official duties.

(2) It shall be unlawful for any person, long-term care facility, or other entity to knowingly or willfully take action or retaliate against any resident, employee, or other person for filing a complaint with, providing information

to, or otherwise cooperating with any representative of the office of ~~State Long-Term Care Ombudsman~~, the state ~~Long-Term Care Ombudsman~~ council, or a local ~~long-term care ombudsman~~ council.

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

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

(b) ~~Any person, long-term care facility, or other entity who violates this section~~ Commits a misdemeanor of the second degree, punishable as provided in s. 775.083.

Section 17. Section 400.0085, Florida Statutes, is repealed.

Section 18. Section 400.0087, Florida Statutes, is amended to read:

400.0087 Department Agency oversight; funding.—

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

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

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

~~(2)(1) The department of Elderly Affairs shall monitor the office, the state council, and the local ombudsman councils to ensure that each is responsible for carrying out the duties delegated to it by state by s. 400.0069 and federal law. The department, in consultation with the ombudsman, shall adopt rules to establish the policies and procedures for the monitoring of local ombudsman councils.~~

~~(3)(2) The department is responsible for ensuring that the office:~~

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

~~(b) of State Long-Term Care Ombudsman Provides information to public and private agencies, legislators, and others.;~~

~~(c) Provides appropriate training to representatives of the office or of the state or local long-term care ombudsman councils.;~~ and

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

~~(4)(3) The department of Elderly Affairs is the designated state unit on aging for purposes of complying with the federal Older Americans Act. The Department of Elderly Affairs shall ensure that the ombudsman program has the objectivity and independence required to qualify it for funding under the federal Older Americans Act, and shall carry out the long-term care ombudsman program through the Office of State Long-Term Care Ombudsman. The Department of Elderly Affairs shall also:~~

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

~~(b) Whenever necessary, act as liaison between agencies and branches of the federal and state governments and the State Long-Term Care Ombudsman Program representatives, the staffs of the state and local ombudsman councils, and members of the state and local ombudsman councils.~~

Section 19. Section 400.0089, Florida Statutes, is amended to read:

~~400.0089 Complaint data Agency reports.—The office Department of Elderly Affairs shall maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities and to residents, for the purpose of identifying and resolving significant problems. The department and the State Long-Term Care Ombudsman Council shall submit such data as part of its annual report required pursuant to s. 400.0067(2)(f) to the Agency for Health Care Administration, the Department of Children and Family Services, the Florida Statewide Advocacy Council, the Advocacy Center for Persons with Disabilities, the Commissioner for the United States Administration on Aging, the National Ombudsman Resource Center, and any other state or federal entities that the ombudsman determines appropriate. The office State Long-Term Care Ombudsman Council shall publish quarterly and make readily available information pertaining to the number and types of complaints received by the State Long-Term Care Ombudsman Program and shall include such information in the annual report required under s. 400.0065.~~

Section 20. Section 400.0091, Florida Statutes, is amended to read:

~~400.0091 Training.—The ombudsman shall ensure that provide appropriate training is provided to all employees of the office of State Long-Term Care Ombudsman and to the members of the state and local long-term care ombudsman councils, including all unpaid volunteers.~~

~~(1) All state and local council members volunteers and appropriate employees of the office shall of State Long-Term Care Ombudsman must be given a minimum of 20 hours of training upon employment with the office or approval enrollment as a state or local council member volunteer and 10 hours of continuing education annually thereafter.~~

~~(2) The ombudsman shall approve the curriculum for the initial and continuing education training, which must cover, at a minimum, address:~~

~~(a) Resident confidentiality.~~

- (b) Guardianships and powers of attorney,<sup>5</sup>
- (c) Medication administration,<sup>5</sup>
- (d) Care and medication of residents with dementia and Alzheimer's disease,<sup>5</sup>
- (e) Accounting for residents' funds,<sup>5</sup>
- (f) Discharge rights and responsibilities,<sup>5</sup> and
- (g) Cultural sensitivity.
- (h) Any other topic recommended by the secretary.

(3) No employee, officer, or representative of the office or of the state or local ~~long-term care ombudsman~~ councils, other than the ombudsman, may hold himself or herself out as a representative of the State Long-Term Care Ombudsman Program or conduct ~~carry out~~ any authorized program ombudsman duty described in this part or responsibility unless the person has received the training required by this section and has been certified ~~ap~~proved by the ombudsman as qualified to carry out ombudsman activities on behalf of the office or the state or local ~~long-term care ombudsman~~ councils.

Section 21. This act shall take effect upon becoming a law.

Approved by the Governor June 9, 2006.

Filed in Office Secretary of State June 9, 2006.