

CHAPTER 2015-31

Committee Substitute for Senate Bill No. 7018

An act relating to the state ombudsman program; amending s. 400.0060, F.S.; revising and defining terms; amending s. 400.0061, F.S.; revising legislative intent with respect to citizen ombudsmen; deleting references to ombudsman councils and transferring their responsibilities to representatives of the State Long-Term Care Ombudsman Program; amending s. 400.0063, F.S.; deleting references to ombudsman councils and the Office of the State Long-Term Care Ombudsman and replacing them with the State Long-Term Care Ombudsman Program; amending s. 400.0065, F.S.; revising the duties and authority of the state ombudsman; requiring the state ombudsman to submit an annual report to the Governor, the Legislature, and specified agencies and entities; amending s. 400.0067, F.S.; revising duties and membership of the State Long-Term Care Ombudsman Council; amending s. 400.0069, F.S.; requiring the state ombudsman to designate and direct program districts; requiring each district to conduct quarterly public meetings; providing duties of representatives of the program in the districts; revising the appointments of and qualifications for district ombudsmen; prohibiting certain individuals from serving as ombudsmen; amending s. 400.0070, F.S.; providing conditions under which a representative of the program could be found to have a conflict of interest; requiring the Department of Elderly Affairs, in consultation with the state ombudsman, to define by rule what constitutes a conflict of interest; amending s. 400.0071, F.S.; requiring the Department of Elderly Affairs to consult with the state ombudsman to adopt rules pertaining to complaint procedures; amending s. 400.0073, F.S.; providing procedures for investigation of complaints; amending s. 400.0074, F.S.; revising procedures for conducting onsite administrative assessments; authorizing the department to adopt rules; amending s. 400.0075, F.S.; revising complaint notification and resolution procedures; amending s. 400.0078, F.S.; providing for a resident or representative of a resident to receive additional information regarding resident rights; amending s. 400.0079, F.S.; providing immunity from liability for a representative of the office under certain circumstances; amending s. 400.0081, F.S.; requiring long-term care facilities to provide representatives of the office with access to facilities, residents, and records for certain purposes; amending s. 400.0083, F.S.; conforming provisions to changes made by the act; amending s. 400.0087, F.S.; providing for the office to coordinate ombudsman services with Disability Rights Florida; amending s. 400.0089, F.S.; conforming provisions to changes made by the act; amending s. 400.0091, F.S.; revising training requirements for representatives of the office and ombudsmen; amending ss. 20.41, 400.021, 400.022, 400.0255, 400.162, 400.19, 400.191, and 400.23, F.S.; conforming provisions to changes made by the act; amending s. 400.235, F.S.; conforming provisions to changes made by the act; revising the additional criteria for recognition as a Gold Seal Program facility; amending ss. 415.102, 415.1034, 415.104,

415.1055, 415.106, 415.107, 429.02, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, and 429.85, F.S.; conforming provisions to changes made by the act; 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, 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) “Agency” means the Agency for Health Care Administration.

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

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

(5)(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.

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

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

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

(9) “Representative of the State Long-Term Care Ombudsman Program” means the state ombudsman, an employee of the state or district office certified as an ombudsman or an individual certified as an ombudsman serving on the state or a local council.

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

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

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

(13) “State ombudsman” means the State Long-Term Care Ombudsman, who is the individual appointed by the Secretary of Elderly Affairs to head the State Long-Term Care Ombudsman Program.

(14) “State ombudsman program” means the State Long-Term Care Ombudsman Program operating under the direction of the State Long-Term Care Ombudsman.

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 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 resident. The Legislature finds that concerned citizens are often more effective advocates for 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 use ~~utilize~~ voluntary citizen ombudsman councils under the leadership of the State Long-Term Care Ombudsman ~~ombudsman~~, and, through them, to operate a state ~~an~~ ombudsman program, which shall, without interference by any executive agency, undertake to discover, investigate, and determine the presence of conditions or individuals that ~~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 representatives of the State Long-Term Care Ombudsman Program ~~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 of long-term care facilities. It is the further intent of the Legislature that the environment in long-term care facilities be conducive to the dignity and independence of residents and that investigations by representatives of the State Long-Term Care Ombudsman Program

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

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

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

(b) The state 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 state ombudsman.

(3)(a) There is created in the office the position of legal advocate, who shall be selected by and serve at the pleasure of the state ombudsman and 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 state ombudsman in carrying out the duties of the office with respect to the abuse, neglect, exploitation or violation of rights of residents of long-term care facilities.

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

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

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

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

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

(1) The purpose of the ~~Office of State Long-Term Care Ombudsman Program~~ is 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 assist in protecting the health, safety, welfare, and rights of residents.

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

(d) Ensure that residents have regular and timely access to the services provided through the State Long-Term Care Program ~~office~~ and that residents and complainants receive timely responses from representatives of the State Long-Term Care Program ~~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 state and local 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 has ~~shall have~~ the duty and authority to:

(a) Establish and coordinate districts and local 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, employ such personnel ~~as are~~ necessary to perform adequately the functions of the office and provide or contract for legal services to assist the representatives of the State Long-Term Care Ombudsman Program ~~state and local councils in~~

the performance of their duties. Staff positions established for the purpose of coordinating the activities of each local council and assisting its members may 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 for the purpose of coordinating and avoiding duplication of advocacy services provided to residents.~~

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

~~(h)(i)~~ Prepare an annual report describing the activities carried out by the office, the state council, the districts and the local councils in the year for which the report is prepared. The state ombudsman shall submit the report to the secretary, 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 Families, and the Secretary of the Agency for Health Care Administration 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 Families, and the Secretary of Health Care Administration.~~ The report must 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 State Long-Term Care Ombudsman Program ~~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 representatives of the State Long-Term Care Ombudsman Program ~~local councils~~ regarding program functions and activities.

Section 5. 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 Program, 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 state ombudsman in reaching a consensus among districts and local councils on issues affecting residents and impacting the optimal operation of the program.

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

(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.

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

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

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

(3) The State Long-Term Care Ombudsman Council consists ~~shall be composed of one active~~ certified ombudsman from each local council in a

~~district member elected by each local council plus three at-large members appointed by the Governor.~~

(a) Each local council ~~in a district must select~~ shall elect by majority vote a representative ~~of its choice to serve 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 ~~state ombudsman secretary, after consulting with the ombudsman,~~ shall submit to the ~~secretary~~ Governor a list of ~~individuals~~ persons recommended for appointment to the at-large positions on the state council. The list ~~may~~ shall not include the name of any ~~individual~~ person who is currently serving ~~in a district on a local council.~~

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

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

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

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

3. A local council may recommend ~~replacement~~ removal of its ~~selected~~ elected representative from the state council by a majority vote. If the council votes to ~~replace~~ remove its representative, the local council chair shall immediately notify the ~~state~~ ombudsman. ~~The secretary shall advise the Governor of the local council's vote upon receiving notice from the ombudsman.~~

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

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

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

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

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 ~~before~~ ~~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 ~~before~~ ~~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.

~~(d)~~^(e)1. The state council shall meet upon the call of the chair or upon the call of the state ombudsman. The state council shall meet at least quarterly but may meet 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, the district, or any local council, outside of a publicly noticed meeting at which a quorum is present.

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

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

400.0069 Long-term care ombudsman districts; local long-term care ombudsman councils; duties; ~~appointment~~ membership.—

(1)(a) The state ombudsman shall designate districts and each district 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 district ~~local council~~ shall function under the direction of the state ombudsman.

(b) The state ombudsman shall ensure that there is at least one employee of the department certified as a long-term care ombudsman and a least one local council operating in each district ~~of the department's planning and service areas~~. The state 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.

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

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

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

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

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

(d) Review and, if necessary, comment on 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, welfare, and rights~~ welfare of residents.

(e) Review personal property and money accounts of 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 state ombudsman and the legal advocate seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

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

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

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

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

(a) Upon good cause shown and with the consent of the ombudsman, the state ombudsman may appoint an ombudsman to another district. The ombudsman shall strive to ensure that each local council 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 practice in a long-term care facility;
2. At least one registered nurse who has geriatric experience;
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) The following individuals may not be appointed as ombudsmen:

1. The owner or representative of a long-term care facility.
2. A provider or representative of a provider of long-term care service.
3. An employee of the agency.
4. An employee of the department, except for staff certified as ombudsmen in the district offices.
5. An employee of the Department of Children and Families.
6. An employee of the Agency for Persons with Disabilities.

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

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

- ~~1. Individuals wishing to join a local council shall Submit an application to the state ombudsman or his or her designee. 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.~~
2. Successfully complete a level 2 background screening pursuant to s. 430.0402 and chapter 435.

(b) The state ombudsman shall approve or deny the appointment of the individual as an ombudsman secretary ~~may rescind the ombudsman's approval of a member on a local council at any time.~~ If the state ombudsman secretary rescinds the approval of a member on a local council, the state 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 state ombudsman secretary provides his or her approval.

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

(d) The state ombudsman may rescind the appointment of an individual as an ombudsman for good cause shown, such as development of a conflict of interest, failure to adhere to the policies and procedures established by the State Long-Term Care Ombudsman Program, or demonstrated inability to carry out the responsibilities of the program. After the appointment is rescinded, the individual may not conduct any duties as an ombudsman and may not represent the State Long-Term Care Ombudsman Program.

~~(e)~~(e) A local council may recommend the removal of one or more of its members by submitting to the state 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 manager coordinator shall immediately report the council's recommendation to the state ombudsman. The state ombudsman shall review the recommendation of the local council and advise the district manager and local council chair ~~secretary~~ of his or her decision ~~recommendation~~ regarding removal of the council member or members.

(6)(a) Each local 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.

(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 before ~~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 local council shall meet upon the call of its chair or upon the call of the ombudsman. Each local council shall meet at least once a month but may meet more frequently if necessary.

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

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

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

400.0070 Conflicts of interest.—

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

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

(a) Situations that constitute a ~~person having a~~ conflict of interest which ~~that~~ could materially affect the objectivity or capacity of an individual a person to serve as a representative of the State Long-Term Care Ombudsman Program while carrying out the purposes of the State Long-Term Care

~~Program as specified in this part 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 an individual ~~a person~~ listed in subsection (2) must ~~shall~~ certify that he or she does not have a ~~has no~~ conflict of interest.

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

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

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

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

400.0073 State and local ombudsman council investigations.—

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

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

~~(2)(3)~~ Subsequent to an appeal from a local council, the state council may investigate any complaint received by the local council involving a long-term care facility or a resident.

~~(3)(4)~~ If a representative of the State Long-Term Care Ombudsman Program ~~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 State Long-Term Care Ombudsman Program ~~office, the state council, or the local council~~ in the performance of official duties as described in s. 400.0083(1) and to have ~~violated~~ committed a violation of this part. The representative of the State Long-Term Care Ombudsman Program ~~ombudsman~~ shall report a facility’s refusal to allow entry to the state ombudsman or his or her designee, who shall report the incident 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. 429.14, s. 429.19, s. 429.69, or s. 429.71.

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

400.0074 Local ombudsman council onsite administrative assessments.

(1) A representative of the State Long-Term Care Ombudsman Program shall ~~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 must be resident-centered and must ~~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 assessment ~~may assessments~~ shall not duplicate the efforts of the agency surveys and inspections of long-term care facilities conducted by state agencies under part II of this chapter and parts I and II of chapter 429.

(b) An administrative assessment shall be conducted at a time and for a duration necessary to produce the information required to complete the assessment ~~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 representative of the State Long-Term Care Ombudsman Program ~~local council member physically present for the administrative assessment must shall identify himself or herself to the administrator and cite the specific statutory authority for his or her assessment of the facility or his or her designee.~~

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

(f) A representative of the State Long-Term Care Ombudsman Program ~~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 does not impose an ~~will impose no~~ unreasonable burden on a long-term care facility.

(3) Regardless of jurisdiction, the state 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 a representative of the State Long-Term Care Ombudsman Program ~~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 State Long-Term Care Ombudsman Program ~~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 representative of the State Long-Term Care Ombudsman Program ~~ombudsman~~ shall report the refusal by a facility to allow entry to the state ombudsman or his or her designee, who shall report the incident 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. 429.14, s. 429.19, s. 429.69, or s. 429.71.

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

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

400.0075 Complaint notification and resolution procedures.—

(1)(a) Any complaint ~~or problem~~ verified by a representative of the State Long-Term Care Ombudsman Program ~~an ombudsman council~~ as a result of an investigation which is determined by the local council to require remedial

~~action may or onsite administrative assessment, which complaint or problem is determined to require remedial action by the local council, shall be identified and brought to the attention of the long-term care facility administrator subject to the confidentiality provisions of s. 400.0077 in writing. Upon receipt of the information such document, the administrator, with the concurrence of the representative of the State Long-Term Care Ombudsman Program local 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 representative of the State Long-Term Care Ombudsman Program may extend the target date if there is reason to believe such action would facilitate the resolution of the complaint, or the representative of the State Long-Term Care Ombudsman Program may refer the complaint to the district manager, who may refer the complaint to the state council. local council chair may, after obtaining approval from the ombudsman and a majority of the members of the local council:~~

- ~~1. Extend the target date if the chair has reason to believe such action would facilitate the resolution of the complaint.~~
- ~~2. In accordance with s. 400.0077, publicize the complaint, the recommendations of the council, and the response of the long-term care facility.~~
- ~~3. Refer the complaint to the state council.~~

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

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

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

~~(a)1.~~ 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.

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

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

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

~~(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, shall seek immediate legal or administrative remedies to protect the resident.

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

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

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

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

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

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

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

~~(c)~~ Information that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident rights;

(d) Other relevant information regarding how to contact representatives of the State Long-Term Care Ombudsman Program ~~the program~~.

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

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

400.0079 Immunity.—

(1) Any person making a complaint pursuant to this part 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) Representatives of the State Long-Term Care Ombudsman Program ~~are The ombudsman or any person authorized by the ombudsman to act on behalf of the office, as well as all members of the state and local councils,~~ 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 14. 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 representatives of the State Long-Term Care Program with ~~the office, the state council and its members, and the local councils and their members~~ access to:

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

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

1. The representative of the State Long-Term Care Ombudsman Program ~~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 does not have a ~~has~~ no legal representative.

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

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

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

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

(d) Access to The administrative records, policies, and documents to which 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) The department, in consultation with the state ombudsman ~~and the state council~~, may adopt rules to establish procedures to ensure access to facilities, residents, and records as described in this section.

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

400.0083 Interference; retaliation; penalties.—

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

(2) ~~A It shall be unlawful for any person, long-term care facility, or other entity~~ may not ~~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 State Long-Term Care Ombudsman Program office, the state council, or a local council.

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

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

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

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

400.0087 Department 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 State Long-Term Care Ombudsman Program. The remaining allotment from the Older Americans Act program shall be expended on direct ombudsman activities.

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

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

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

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

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

(d) Coordinates ombudsman services with Disability Rights Florida, 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) The department shall also:

(a) Receive and disburse state and federal funds for purposes that the state ombudsman 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.

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

400.0089 Complaint data reports.—The State Long-Term Care Ombudsman Program office 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 complaints significant problems. The office 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 shall be published quarterly and made readily available and shall include such information in the annual report required under s. 400.0065.

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

400.0091 Training.—The state ombudsman shall ensure that appropriate training is provided to all representatives of the State Long-Term Care

Ombudsman Program employees of the office and to the members of the state and local councils.

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

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

- (a) Resident confidentiality.
- (b) Guardianships and powers of attorney.
- (c) Medication administration.
- (d) Care and medication of residents with dementia and Alzheimer's disease.
- (e) Accounting for residents' funds.
- (f) Discharge rights and responsibilities.
- (g) Cultural sensitivity.
- (h) Any other topic related to residency in a long-term care facility recommended by the secretary.

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

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

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

(4) The department shall administer the State Long-Term Care Ombudsman Program Council, created by s. ~~400.0063~~ 400.0067, and the ~~local long-term care ombudsman councils, created by s. 400.0069~~ and shall, as required by s. 712 of the federal Older Americans Act of 1965, ensure that both the State Long-Term Care Ombudsman Program operates state and local long-

~~term care ombudsman councils operate~~ in compliance with the Older Americans Act.

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

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

(14) “Office” has the same meaning as in s. 400.0060.

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

(16) “Representative of the State Long-Term Care Ombudsman Program” has the same meaning as in s. 400.0060.

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

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

~~(19)~~(17) “Resident designee” means a person, other than the owner, administrator, or employee of the facility, designated in writing by a resident or a resident’s guardian, if the resident is adjudicated incompetent, to be the resident’s representative for a specific, limited purpose.

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

~~(21)~~(19) “Therapeutic spa services” means bathing, nail, and hair care services and other similar services related to personal hygiene.

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

400.022 Residents’ rights.—

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

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

1. Any representative of the federal or state government, including, but not limited to, representatives of the Department of Children and Families, the Department of Health, the Agency for Health Care Administration, the Office of the Attorney General, and the Department of Elderly Affairs; any law enforcement officer; any representative of the State Long-Term Care Ombudsman Program members of the state or local ombudsman council; and the resident's individual physician.

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

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

(2) The licensee for each nursing home shall orally inform the resident of the resident's rights and provide a copy of the statement required by subsection (1) to each resident or the resident's legal representative at or before the resident's admission to a facility. The licensee shall provide a copy of the resident's rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the agency or state or local ombudsman council. The statement must be in boldfaced type and shall include the name, address, and telephone number and e-mail address of the State Long-Term Care Ombudsman Program, the numbers of the local ombudsman council and the Elder Abuse Hotline operated by the Department of Children and Families central abuse hotline where complaints may be lodged.

(3) Any violation of the resident's rights set forth in this section constitutes ~~shall constitute~~ grounds for action by the agency under the provisions of s. 400.102, s. 400.121, or part II of chapter 408. In order to determine whether the licensee is adequately protecting residents' rights, the licensure inspection of the facility must ~~shall~~ include private informal conversations with a sample of residents to discuss residents' experiences within the facility with respect to rights specified in this section and general

compliance with standards, and consultation with the State Long-Term Care Ombudsman Program ombudsman council in the local planning and service area of the Department of Elderly Affairs in which the nursing home is located.

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

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

(8) The notice required by subsection (7) must be in writing and must contain all information required by state and federal law, rules, or regulations applicable to Medicaid or Medicare cases. The agency shall develop a standard document to be used by all facilities licensed under this part for purposes of notifying residents of a discharge or transfer. Such document must include a means for a resident to request the local long-term care ombudsman council to review the notice and request information about or assistance with initiating a fair hearing with the department's Office of Appeals Hearings. In addition to any other pertinent information included, the form shall specify the reason allowed under federal or state law that the resident is being discharged or transferred, with an explanation to support this action. Further, the form must ~~shall~~ state the effective date of the discharge or transfer and the location to which the resident is being discharged or transferred. The form must ~~shall~~ clearly describe the resident's appeal rights and the procedures for filing an appeal, including the right to request the local ombudsman council to review the notice of discharge or transfer. A copy of the notice must be placed in the resident's clinical record, and a copy must be transmitted to the resident's legal guardian or representative and to the local ombudsman council within 5 business days after signature by the resident or resident designee.

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

(11) Notwithstanding paragraph (10)(b), an emergency discharge or transfer may be implemented as necessary pursuant to state or federal law during the ~~period of time~~ after the notice is given and before the time a hearing decision is rendered. Notice of an emergency discharge or transfer to the resident, the resident's legal guardian or representative, and the State Long-Term Care Ombudsman Program or the local ombudsman council if

requested pursuant to subsection (9) must be by telephone or in person. This notice shall be given before the transfer, if possible, or as soon thereafter as practicable. The State Long-Term Care Ombudsman Program or a local ombudsman council conducting a review under this subsection shall do so within 24 hours after receipt of the request. The resident's file must be documented to show who was contacted, whether the contact was by telephone or in person, and the date and time of the contact. If the notice is not given in writing, written notice meeting the requirements of subsection (8) must be given the next working day.

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

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

- (a) The resident, or the resident's legal representative or designee.
- (b) The facility administrator, or the facility's legal representative or designee.

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

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

- (a) Names and addresses.
- (b) Medical services provided.
- (c) Social and economic conditions or circumstances.
- (d) Evaluation of personal information.
- (e) Medical data, including diagnosis and past history of disease or disability.
- (f) Any information received verifying income eligibility and amount of medical assistance payments. Income information received from the Social Security Administration or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data.

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

Section 23. Paragraph (d) of subsection (5) of section 400.162, Florida Statutes, is amended to read:

400.162 Property and personal affairs of residents.—

(5)

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

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

400.19 Right of entry and inspection.—

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

(4) The agency shall conduct unannounced onsite facility reviews following written verification of licensee noncompliance in instances in which a representative of the State Long-Term Care Ombudsman Program or long-term care ombudsman council, pursuant to ss. 400.0071 and 400.0075, has received a complaint and has documented deficiencies in resident care or in the physical plant of the facility that threaten the health,

safety, or security of residents, or when the agency documents through inspection that conditions in a facility present a direct or indirect threat to the health, safety, or security of residents. However, the agency shall conduct unannounced onsite reviews every 3 months of each facility while the facility has a conditional license. Deficiencies related to physical plant do not require followup reviews after the agency has determined that correction of the deficiency has been accomplished and that the correction is of the nature that continued compliance can be reasonably expected.

Section 25. Subsection (1) of section 400.191, Florida Statutes, is amended to read:

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

(1) The agency shall provide information to the public about all of the licensed nursing home facilities operating in the state. The agency shall, within 60 days after a licensure inspection visit or within 30 days after any interim visit to a facility, send copies of the inspection reports to the office ~~local long-term care ombudsman council~~, the agency's local office, and a public library or the county seat for the county in which the facility is located. The agency may provide electronic access to inspection reports as a substitute for sending copies.

Section 26. Subsection (6) and paragraph (c) of subsection (7) of section 400.23, Florida Statutes, are amended to read:

400.23 Rules; evaluation and deficiencies; licensure status.—

(6) ~~Before~~ Prior to conducting a survey of the facility, the survey team shall obtain a copy of the local long-term care ombudsman council report on the facility. Problems noted in the report shall be incorporated into and followed up through the agency's inspection process. This procedure does not preclude the State Long-Term Care Ombudsman Program or local long-term care ombudsman council from requesting the agency to conduct a followup visit to the facility.

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

(c) In evaluating the overall quality of care and services and determining whether the facility will receive a conditional or standard license, the agency shall consider the needs and limitations of residents in the facility and the results of interviews and surveys of a representative sampling of residents,

families of residents, representatives of the State Long-Term Care Ombudsman Program ~~ombudsman council members in the planning and service area in which the facility is located~~, guardians of residents, and staff of the nursing home facility.

Section 27. Paragraph (a) of subsection (3), paragraph (f) of subsection (5), and subsection (6) of section 400.235, Florida Statutes, are amended to read:

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

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

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

(f) ~~Evidence that verified an outstanding record regarding the number and types of substantiated complaints reported to the State Long-Term Care Ombudsman Program Council within the 30 months preceding application for the program have not resulted in a citation for licensure.~~

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

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

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

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

(18) “Office” has the same meaning as in s. 400.0060.

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

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

(1) MANDATORY REPORTING.—

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

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

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

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

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

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

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

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

8. Bank, savings and loan, or credit union officer, trustee, or employee, who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.

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

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

(1) The department shall, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, begin within 24 hours a protective investigation of the facts alleged therein. If a caregiver refuses to allow the department to begin a protective investigation or interferes with the conduct of such an investigation, the appropriate law enforcement agency shall be contacted for assistance. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement agency and state attorney shall be orally notified. The department and the law enforcement agency shall cooperate to allow the criminal investigation to proceed concurrently with, and not be hindered by, the protective investigation. The department shall make a preliminary written report to the law enforcement agencies within 5 working days after the oral report. The department shall, within 24 hours after receipt of the report, notify the appropriate Florida local advocacy council, or the State Long-Term Care Ombudsman Program ~~long-term care ombudsman council~~, when appropriate, that an alleged abuse, neglect, or exploitation perpetrated by a second party has occurred. Notice to the Florida local advocacy council or the State Long-Term Care Ombudsman Program ~~long-term care ombudsman council~~ may be accomplished orally or in writing and shall include the name and location of the vulnerable adult alleged to have been abused, neglected, or exploited and the nature of the report.

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

415.1055 Notification to administrative entities.—

(8) At the conclusion of a protective investigation at a facility, the department shall notify either the Florida local advocacy council or the State Long-Term Care Ombudsman Program or ~~the~~ long-term care ombudsman council of the results of the investigation. This notification must be in writing.

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

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

(2) To ensure coordination, communication, and cooperation with the investigation of abuse, neglect, or exploitation of vulnerable adults, the department shall develop and maintain interprogram agreements or operational procedures among appropriate departmental programs and the State Long-Term Care Ombudsman Program ~~Council~~, the Florida Statewide Advocacy Council, and other agencies that provide services to vulnerable adults. These agreements or procedures must cover such subjects

as the appropriate roles and responsibilities of the department in identifying and responding to reports of abuse, neglect, or exploitation of vulnerable adults; the provision of services; and related coordinated activities.

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

415.107 Confidentiality of reports and records.—

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

(g) Any appropriate official of the Florida advocacy council, State Long-Term Care Ombudsman Program or long-term care ombudsman council investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable adult.

Section 34. Present subsections (16) through (26) of section 429.02, Florida Statutes, are redesignated as subsections (17) through (27), respectively, present subsections (11) and (20) are amended, and a new subsection (16) is added to that section, to read:

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

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

(16) “Office” has the same meaning as in s. 400.0060.

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

(18)~~(17)~~ “Physical restraint” means a device which physically limits, restricts, or deprives an individual of movement or mobility, including, but not limited to, a half-bed rail, a full-bed rail, a geriatric chair, and a posey restraint. The term “physical restraint” shall also include any device which was not specifically manufactured as a restraint but which has been altered, arranged, or otherwise used for this purpose. The term shall not include bandage material used for the purpose of binding a wound or injury.

(19)~~(18)~~ “Relative” means an individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother,

grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of an owner or administrator.

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

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

~~(22)~~⁽²¹⁾ “Service plan” means a written plan, developed and agreed upon by the resident and, if applicable, the resident’s representative or designee or the resident’s surrogate, guardian, or attorney in fact, if any, and the administrator or designee representing the facility, which addresses the unique physical and psychosocial needs, abilities, and personal preferences of each resident receiving extended congregate care services. The plan shall include a brief written description, in easily understood language, of what services shall be provided, who shall provide the services, when the services shall be rendered, and the purposes and benefits of the services.

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

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

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

~~(26)~~⁽²⁵⁾ “Supportive services” means services designed to encourage and assist aged persons or adults with disabilities to remain in the least

restrictive living environment and to maintain their independence as long as possible.

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

Section 35. Subsection (9) of section 429.19, Florida Statutes, is amended to read:

429.19 Violations; imposition of administrative fines; grounds.—

(9) The agency shall develop and disseminate an annual list of all facilities sanctioned or fined for violations of state standards, the number and class of violations involved, the penalties imposed, and the current status of cases. The list shall be disseminated, at no charge, to the Department of Elderly Affairs, the Department of Health, the Department of Children and Families, the Agency for Persons with Disabilities, the area agencies on aging, the Florida Statewide Advocacy Council, and the State Long-Term Care Ombudsman Program and state and local ombudsman councils. The Department of Children and Families shall disseminate the list to service providers under contract to the department who are responsible for referring persons to a facility for residency. The agency may charge a fee commensurate with the cost of printing and postage to other interested parties requesting a copy of this list. This information may be provided electronically or through the agency’s Internet site.

Section 36. Subsection (8) of section 429.26, Florida Statutes, is amended to read:

429.26 Appropriateness of placements; examinations of residents.—

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

Section 37. Subsection (2) and paragraph (b) of subsection (3) of section 429.28, Florida Statutes, are amended to read:

429.28 Resident bill of rights.—

(2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. This notice ~~must~~ shall include the statewide toll-free telephone number and e-mail address of the State Long-Term Care Ombudsman Program and the telephone number of name, address, and telephone numbers of the local ombudsman council and the Elder Abuse Hotline operated by the Department of Children and Families central abuse hotline and, when applicable, the Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council, where complaints may be lodged. The facility must ensure a resident's access to a telephone to call the State Long-Term Care Ombudsman Program or local ombudsman council, the Elder Abuse Hotline operated by the Department of Children and Families central abuse hotline, Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council.

(3)

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

Section 38. Section 429.34, Florida Statutes, is amended to read:

429.34 Right of entry and inspection.—In addition to the requirements of s. 408.811, ~~a~~ any duly designated officer or employee of the department, the Department of Children and Families, the Medicaid Fraud Control Unit of the Office of the Attorney General, the state or local fire marshal, or a representative of the State Long-Term Care Ombudsman Program or a member of the state or local long-term care ombudsman council ~~may~~ shall have the right to enter unannounced upon and into the premises of any facility licensed under pursuant to this part in order to determine the state of compliance with ~~the provisions of~~ this part, part II of chapter 408, and applicable rules. Data collected by the State Long-Term Care Ombudsman Program, state or local long-term care ombudsman councils or the state or local advocacy councils may be used by the agency in investigations involving violations of regulatory standards.

Section 39. Subsection (2) of section 429.35, Florida Statutes, is amended to read:

429.35 Maintenance of records; reports.—

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

Section 40. Subsection (6) of section 429.67, Florida Statutes, is amended to read:

429.67 Licensure.—

(6) In addition to the requirements of s. 408.811, access to a licensed adult family-care home must be provided at reasonable times for the appropriate officials of the department, the Department of Health, the Department of Children and Families, the agency, and the State Fire Marshal, who are responsible for the development and maintenance of fire, health, sanitary, and safety standards, to inspect the facility to assure compliance with these standards. In addition, access to a licensed adult family-care home must be provided at reasonable times to representatives of the State Long-Term Care Ombudsman Program for the local long-term care ombudsman council.

Section 41. Subsection (2) of section 429.85, Florida Statutes, is amended to read:

429.85 Residents' bill of rights.—

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

Section 42. This act shall take effect July 1, 2015.

Approved by the Governor May 14, 2015.

Filed in Office Secretary of State May 14, 2015.