



Health Care Appropriations Subcommittee

Meeting Packet

April 2, 2013
8:00 AM—10:00 AM
Webster Hall



The Florida House of Representatives

Appropriations Committee

Health Care Appropriations Subcommittee

Will Weatherford
Speaker

Matt Hudson
Chair

AGENDA

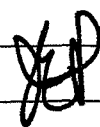
April 2, 2013

Webster Hall (212 Knott)

- I. Call to Order/Roll Call
- II. CS/HB 1015—State Ombudsman Program by Roberson
- III. CS/HB 1109—Transitional Living Facilities by Magar
- IV. CS/HB 1323—Medicaid Eligibility by Nunez
- V. CS/HB 125—Program of All-inclusive Care for the Elderly by Smith
- VI. HB 817—Health Care Providers by Gaetz
- VII. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1015 State Ombudsman Program
SPONSOR(S): Healthy Families Subcommittee; Roberson
TIED BILLS: IDEN./SIM. **BILLS:** SB 1212

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	12 Y, 0 N, As CS	Poche	Schoolfield
2) Health Care Appropriations Subcommittee		Pridgeon	Pridgeon 
3) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 1015 revises the operating structure and internal procedures of the State Long-Term Care Ombudsman Program (LTCOP), housed in the Department of Elderly Affairs (DOEA), to reflect current practice, maximize operational and program efficiencies, and conform to the federal Older Americans Act, 42 U.S.C. §§ 3001, et seq. The LTCOP is operated pursuant to part I of chapter 400, F.S.

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

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

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

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Elder Affairs

Florida has nearly 4,400,000 residents aged 60 and older.¹ The state is first in the nation in the percentage of citizens who are elders, measuring 23% of total population in 2010 and estimated to soar to 35% of total population in 2030.²

The Department of Elder Affairs (DOEA), established in 1992, serves as the primary agency for administering human services programs for the elderly and developing policy recommendations for long-term care.³ Section 20.41, F.S., creates the DOEA and details some of its roles and responsibilities.⁴ For example, the DOEA is statutorily required to administer the State Long-Term Care Ombudsman Council⁵ and the local long-term care ombudsman councils,^{6,7} which provide advocacy on behalf of residents of long-term care facilities by identifying, investigating, and resolving complaints made by or on behalf of residents.

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

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

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

¹ Florida Office of Economic and Demographic Research, *2010 Census Summary File 1 Profiles-Detailed Age by Race/Hispanic Origin by Gender*, available at <http://edr.state.fl.us/Content/population-demographics/2010-census/data/index.cfm> (last viewed February 26, 2013).

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

³ S. 430.03(1), F.S.

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

⁵ S. 400.0067, F.S.

⁶ S. 400.0069, F.S.

⁷ S. 20.41(4), F.S.

⁸ S. 20.41(5), F.S.

⁹ S. 430.04, F.S.

¹⁰ S. 20.41(6), F.S.

¹¹ *Id.*

¹² S. 20.415, F.S.

State Long-Term Care Ombudsman Program

The State Long-Term Care Ombudsman Program (LTCOP) is a statewide, volunteer-based system of local councils that act as advocates for residents of long-term care facilities.¹³ The LTCOP was established by Title VII of the federal Older Americans Act¹⁴ and its operation is governed by state statute.¹⁵ Through 17 districts¹⁶ that together cover the entire state, volunteers identify, investigate, and resolve complaints made by, or on behalf of, residents of nursing homes, assisted living facilities, adult family care homes, or continuing care retirement communities. In addition to investigating and resolving complaints, the LTCOP performs the following services or activities:

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

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

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

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

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

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

¹⁵ Part I, Ch. 400, F.S.

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

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

¹⁸ Florida's Long-Term Care Ombudsman Program, *Residents and Families*, available at <http://ombudsman.myflorida.com/ResidentFam.php> (last visited March 14, 2013).

¹⁹ S. 400.0089, F.S.

²⁰ Id.

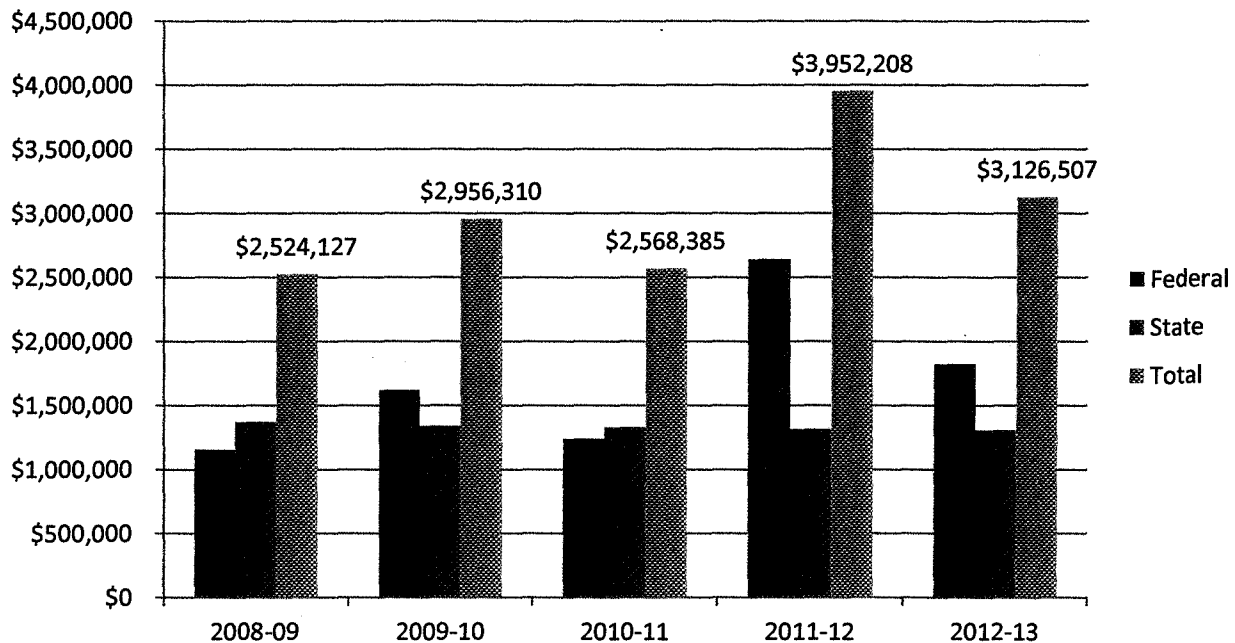
²¹ 42 U.S.C. s. 3058g(c) and 42 U.S.C. s. 3058g(h)(1).

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

²³ Id.

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

The following chart shows the appropriation history of the LTCOP over the past five fiscal years²⁴:



The following chart details some of the activities of the LTCOP over the last five years, including the number of facilities assessed, the total number of assessments conducted, and the number of complaints investigated²⁵:

FEDERAL REPORTING YEAR	FACILITIES	ASSESSMENTS	COMPLAINTS INVESTIGATED
2008-2009	3,932	3,932	8,302
2009-2010	4,016	4,016	8,651
2010-2011	4,039	3,347	7,534
2011-2012	4,039	4,269	8,600
2012-2013 ²⁶	4,074	4,074	8,000

Effect of Proposed Changes

The bill revises the operating structure and internal procedures of the LTCOP to reflect current practice, maximize operational and program efficiencies, and conform to the OAA.²⁷

Definitions

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

²⁴ Id. at page 78.
²⁵ Id. at page 79.
²⁶ These are estimated figures.
²⁷ See supra, FN 14.
STORAGE NAME:
DATE:

The district is replacing the local council structure in each of the districts in the state. The bill revises the definition of "ombudsman" to mean an individual certified by the state ombudsman under the statute to carry out the duties of the LTCOP and creates a separate definition of "state ombudsman" to refer to the person appointed by the Secretary of the DOEA to lead the LTCOP. The bill adds the definition of "representative of the office" to mean the state ombudsman, employees of his or her office, and persons certified to serve as ombudsmen under the LTCOP. Finally, the bill adds the definition of "state ombudsman program" to mean the LTCOP operating under the direction of the state ombudsman's office.

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

State Long-Term Care Ombudsman Duties and Responsibilities

In s. 400.0065(2)(c), F.S., which outlines the duties and responsibilities of the State Long-Term Care Ombudsman, the bill deletes reference to staff positions established for the purpose of coordinating the activities of the local councils. Current law permits the state ombudsman to fill these positions after his or her appointment and requires that he or she certify individuals under s. 400.0091, F.S., to serve as a representative of the LTCOP. The bill specifies who may be a representative of the office of the ombudsman and the requirements for the certification.

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

State Long-Term Care Ombudsman Advisory Council

The bill renames the State Long-Term Care Ombudsman Council, established in s. 400.0067, F.S., to the State Long-Term Care Ombudsman Advisory Council (Council). The bill removes references to the local councils in the outline of the Council's duties and requires the Council to:

- Assist the state ombudsman in developing strategies to increase the number of ombudsmen and retain ombudsmen;
- Assist the state ombudsman in developing long-term strategies for the LTCOP;
- No longer serve as an appellate body to hear complaints that were not resolved by the local councils (the state ombudsman will handle appeals);
- Assist the state ombudsman with the development and implementation of laws, rules, and regulations impacting residents of long-term care facilities;
- No longer assist the state ombudsman in receiving, responding to, and resolving complaints (the district ombudsmen will handle complaints);
- Solicit assistance, at the request of the state ombudsman, with improving care of residents of long-term care facilities; and
- No longer assist with the development of the annual report.

Currently, the Council consists of one active local council member from each of the 17 districts, plus three at-large members. The bill reconstitutes the membership of the Council, as follows:

- Five certified ombudsmen from different districts of the state;
- Three long-term care facility administrators, one each from a nursing home, an assisted living facility, and an adult family care home;
- One resident of a long-term care facility or a family member of a resident of a long-term care facility;
- One attorney in good standing with The Florida Bar with experience in elder law, guardianship, facility regulation, or another relevant area;

- One physician or other specified medical professional with experience with geriatric patients;
- One licensed pharmacist;
- One registered dietician or nutritionist;
- One licensed clinical social worker with mental health counseling experience or one mental health counselor;
- One executive director of an AAA; and
- One at-large member.

The bill requires the state ombudsman to submit a list of his or her recommendations for individuals to serve on the Council to Secretary, who will then appoint members of the Council. Current law gives the Governor the authority to appoint members to the Council.

The bill also revises the internal operational aspects of the Council, such as permitting the Council to perform its duties if one or more positions are vacant and providing procedures for dealing with the absence of a member from 50 percent or more of the meetings. The bill deletes the provision requiring the election of a chair of the Council and deletes the provisions outlining the duties of the chair. The bill requires the Council to meet at least twice yearly, instead of quarterly, to reflect the reduction in the Council's duties, especially the elimination of its appellate authority for unresolved complaints. Lastly, the bill leaves reimbursement of Council members for per diem and travel expenses to the discretion of the state ombudsman. Current law requires such reimbursement.

Long-Term Care Ombudsman Districts

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

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

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

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

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

Training

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

Complaint Investigations and Facility Assessments

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

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

The bill makes changes to the notification and resolution process for complaints contained in s. 400.0075, F.S. First, the bill permits a representative of the office of the ombudsman to identify a verified complaint and bring it to the attention of the facility administrator, while adhering to the confidentiality provisions in s. 400.0077, F.S. The administrator must set target dates, with the concurrence of the ombudsman, for resolution of the complaint. If the complaint is not resolved by the target date or remedial action to address the complaint is not forthcoming, the bill requires the complaint to be referred to the district manager.²⁸

If an ombudsman determines, during an investigation, that the health, safety, welfare, or rights of a resident are in immediate danger, the bill requires immediate notification the district manager. The bill then requires the district manager, after verifying the nature of the threat, to notify appropriate state agencies, law enforcement, the state ombudsman, and legal advocate.²⁹ The bill permits the legal advocate to provide appropriate information to law enforcement to initiate an investigation if he or she believes a criminal act was committed in conjunction with the complaint.

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

The bill requires the state ombudsman or his or her designee to assume responsibility for resolving a complaint that has been referred by a district. The bill grants the state ombudsman the authority to take

²⁸ The district manager is a state employee who provides administrative management for the district office.

²⁹ The legal advocate is established in the Office of the State Long-Term Care Ombudsman by s. 400.0063(3), F.S. The legal advocate is selected by the state ombudsman and must be a member in good standing with The Florida Bar. Some of the duties of the legal advocate include assisting the state ombudsman in carrying out his or her duties with respect to abuse, neglect, or violation of rights of residents of long-term care facilities and pursuing administrative, legal, and other appropriate remedies on behalf of residents.

certain action if the facility fails to take action to resolve or remedy the complaint. These actions by the state ombudsman can include publicizing the complaint, publicizing the recommendations for resolution of the complaint, and recommending facility reviews to the appropriate state agency that licenses a particular non-compliant facility to ensure the conditions that gave rise to the original complaint are resolved and do not recur.

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

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

Conforming Changes

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

B. SECTION DIRECTORY:

- Section 1:** Amends s. 400.0060, F.S., relating to definitions.
- Section 2:** Amends s. 400.0061, F.S., relating to legislative findings and intent; long-term care facilities.
- Section 3:** Amends s. 400.0063, F.S., relating to establishment of Office of State Long-Term Care Ombudsman; designation of ombudsman and legal advocate.
- Section 4:** Amends s. 400.0065, F.S., relating to State Long-Term Care Ombudsman; duties and responsibilities.
- Section 5:** Amends s. 400.0067, F.S., relating to State Long-Term Care Ombudsman Council; duties; membership.
- Section 6:** Amends s. 400.0069, F.S., relating to local long-term care ombudsman councils; duties; membership.
- Section 7:** Amends s. 400.0070, F.S., relating to conflicts of interest.
- Section 8:** Amends s. 400.0071, F.S., relating to State Long-Term Care ombudsman program complaint procedures.
- Section 9:** Amends s. 400.0073, F.S., relating to state and local ombudsman council investigations.
- Section 10:** Amends s. 400.0074, F.S., relating to local ombudsman council onsite administrative assessments.
- Section 11:** Amends s. 400.0075, F.S., relating to complaint notification and resolution procedures.
- Section 12:** Amends s. 400.0078, F.S., relating to citizen access to state Long-Term Care ombudsman program services.
- Section 13:** Amends s. 400.0079, F.S., relating to immunity.
- Section 14:** Amends s. 400.0081, F.S., relating to access to facilities, residents, and records.
- Section 15:** Amends s. 400.0083, F.S., relating to interference; retaliation; penalties.
- Section 16:** Amends s. 400.0087, F.S., relating to department oversight; funding.
- Section 17:** Amends s. 400.0089, F.S., relating to complaint data reports.
- Section 18:** Amends s. 400.0091, F.S., relating to training.
- Section 19:** Amends s. 20.41, F.S., relating to Department of Elderly Affairs.
- Section 20:** Amends s. 400.021, F.S., relating to definitions.

- Section 21:** Amends s. 400.022, F.S., relating to residents' rights.
- Section 22:** Amends s. 400.0255, F.S., relating to resident transfer or discharge; requirements and procedures; hearings.
- Section 23:** Amends s. 400.1413, F.S., relating to volunteers in nursing homes.
- Section 24:** Amends s. 400.162, F.S., relating to property and personal affairs of residents.
- Section 25:** Amends s. 400.19, F.S., relating to right of entry and inspection.
- Section 26:** Amends s. 400.191, F.S., relating to availability, distribution, and posting of reports and records.
- Section 27:** Amends s. 400.23, F.S., relating to rules; evaluation and deficiencies; licensure status.
- Section 28:** Amends s. 400.235, F.S., relating to nursing home quality and licensure status; Gold Seal Program.
- Section 29:** Amends s. 415.1034, F.S., relating to mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.
- Section 30:** Amends s. 415.104, F.S., relating to protective investigations of cases of abuse, neglect, or exploitation of vulnerable adults; transmittal of records to state attorney.
- Section 31:** Amends s. 415.1055, F.S., relating to notification to administrative entities.
- Section 32:** Amends s. 415.106, F.S., relating to cooperation by the department and criminal justice and other agencies.
- Section 33:** Amends s. 415.107, F.S., relating to confidentiality of reports and records.
- Section 34:** Amends s. 429.02, F.S., relating to definitions.
- Section 35:** Amends s. 429.07, F.S., relating to license required; fee.
- Section 36:** Amends s. 429.19, F.S., relating to violations; imposition of administrative fines; grounds.
- Section 37:** Amends s. 429.26, F.S., relating to appropriateness of placements; examinations of residents.
- Section 38:** Amends s. 429.28, F.S., relating to resident of bill of rights.
- Section 39:** Amends s. 429.34, F.S., relating to right of entry and inspection.
- Section 40:** Amends s. 429.35, F.S., relating to maintenance of records; reports.
- Section 41:** Amends s. 429.85, F.S., relating to residents' bill of rights.
- Section 42:** Amends s. 744.444, F.S., relating to power of guardian without court approval.
- Section 43:** Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The DOEA believes that requiring the Council to meet biannually instead of quarterly will have a positive fiscal impact. Also, the DOEA believes the bill streamlines many operational aspects of the LTCOP which will make it efficient, and allow the LTCOP to serve more individuals within current resources.

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 460 through 465, the bill purports to allow the representatives of the office of the state ombudsman in the districts to "identify, investigate, and resolve complaints relating to actions or omissions of providers or representatives of providers of long-term care services, other public or private agencies, guardians, representative payees, or other individuals that may adversely affect the health, safety, welfare, or rights of residents." This language is consistent with language found in s. 400.0065(1)(a), F.S. However, reference to "other individuals" in the proposed language does not appear elsewhere in the relevant statute. It is a concern that expanding the authority of representatives of the office of the state ombudsman to identify, investigate, and resolve complaints" regarding the acts or omissions of "other individuals" that may adversely affect the health, safety, welfare, or rights of long-term care facility residents is an improper expansion of authority beyond the scope of the LTCOP. It is recommended that the term "other individuals" be removed from the bill to make the proposed language consistent with similar language in the statute and to ensure that the LTCOP is not overstepping the parameters of its authority.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2013, the Healthy Families Subcommittee adopted three amendments to House Bill 1015. The amendments made the following changes to the bill:

Clarified the number of ombudsmen who will serve on the State Long-Term Care Advisory Council. Corrected two drafting errors to confirm that members of the Advisory Council will be reimbursed for per diem and travel expenses and that district ombudsmen will be reimbursed for travel expenses.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.

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

29 400.0073, F.S.; providing procedures for investigation
 30 of complaints; amending s. 400.0074, F.S.; revising
 31 procedures for conducting onsite administrative
 32 assessments; authorizing the department to adopt
 33 rules; amending s. 400.0075, F.S.; revising complaint
 34 notification and resolution procedures; amending s.
 35 400.0078, F.S.; providing for a resident or
 36 representative of a resident to receive additional
 37 information regarding resident rights; amending s.
 38 400.0079, F.S.; providing immunity from liability for
 39 a representative of the office under certain
 40 circumstances; amending s. 400.0081, F.S.; requiring
 41 long-term care facilities to provide representatives
 42 of the office with access to facilities, residents,
 43 and records for certain purposes; amending s.
 44 400.0083, F.S.; conforming provisions to changes made
 45 by the act; amending s. 400.0087, F.S.; providing for
 46 the office to coordinate ombudsman services with
 47 Disability Rights Florida; amending s. 400.0089, F.S.;
 48 conforming provisions to changes made by the act;
 49 amending s. 400.0091, F.S.; revising training
 50 requirements for representatives of the office and
 51 ombudsmen; amending ss. 20.41, 400.021, 400.022,
 52 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23,
 53 400.235, 415.1034, 415.104, 415.1055, 415.106,
 54 415.107, 429.02, 429.07, 429.19, 429.26, 429.28,
 55 429.34, 429.35, 429.85, and 744.444, F.S.; conforming
 56 provisions to changes made by the act; providing an

57 | effective date.

58 |

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

60 |

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

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

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

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

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

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

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

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

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

92 (8) "Representative of the office" means the state
 93 ombudsman, employees of the office, and individuals certified as
 94 ombudsmen.

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

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

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

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

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

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

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

110 (1) The Legislature finds that conditions in long-term
 111 care facilities in this state are such that the rights, health,
 112 safety, and welfare of residents are not fully ensured by rules

113 of the Department of Elderly Affairs or the Agency for Health
 114 Care Administration or by the good faith of owners or operators
 115 of long-term care facilities. Furthermore, there is a need for a
 116 formal mechanism whereby a long-term care facility resident, a
 117 representative of a long-term care facility resident, or any
 118 other concerned citizen may make a complaint against the
 119 facility or its employees, or against other persons who are in a
 120 position to restrict, interfere with, or threaten the rights,
 121 health, safety, or welfare of a long-term care facility
 122 resident. The Legislature finds that concerned citizens are
 123 often more effective advocates for the rights of others than
 124 governmental agencies. The Legislature further finds that in
 125 order to be eligible to receive an allotment of funds authorized
 126 and appropriated under the federal Older Americans Act, the
 127 state must establish and operate an Office of State Long-Term
 128 Care Ombudsman, to be headed by the state ~~Long-Term Care~~
 129 ombudsman, and carry out a state ~~long-term care~~ ombudsman
 130 program.

131 (2) It is the intent of the Legislature, therefore, to
 132 utilize voluntary citizen ombudsmen ~~ombudsman councils~~ under the
 133 leadership of the state ombudsman, and, through them, to operate
 134 a state ~~an~~ ombudsman program, which shall, without interference
 135 by any executive agency, undertake to discover, investigate, and
 136 determine the presence of conditions or individuals that ~~which~~
 137 constitute a threat to the rights, health, safety, or welfare of
 138 the residents of long-term care facilities. To ensure that the
 139 effectiveness and efficiency of such investigations are not
 140 impeded by advance notice or delay, the Legislature intends that

141 representatives of the office ~~the ombudsman and ombudsman~~
 142 ~~councils and their designated representatives~~ not be required to
 143 obtain warrants in order to enter into or conduct investigations
 144 or onsite administrative assessments of long-term care
 145 facilities. It is the further intent of the Legislature that the
 146 environment in long-term care facilities be conducive to the
 147 dignity and independence of residents and that investigations by
 148 representatives of the office ~~ombudsman councils shall~~ further
 149 the enforcement of laws, rules, and regulations that safeguard
 150 the health, safety, and welfare of residents.

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

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

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

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

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

168 (3)(a) There is created in the office the position of

169 | legal advocate, who shall be selected by and serve at the
 170 | pleasure of the state ombudsman and shall be a member in good
 171 | standing of The Florida Bar.

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

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

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

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

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

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

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

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

195 | (a) Identify, investigate, and resolve complaints made by
 196 | or on behalf of residents of long-term care facilities relating

197 to actions or omissions by providers or representatives of
 198 providers of long-term care services, other public or private
 199 agencies, guardians, or representative payees that may adversely
 200 affect the health, safety, welfare, or rights of the residents.

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

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

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

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

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

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

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

225 | rights of residents.

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

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

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

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

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

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

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

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

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

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

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

- 281 2. Evaluate the problems experienced by residents.
- 282 3. Analyze the successes of the state ombudsman program
- 283 during the preceding year, including an assessment of how
- 284 successfully the office ~~program~~ has carried out its
- 285 responsibilities under the Older Americans Act.
- 286 4. Provide recommendations for policy, regulatory, and
- 287 statutory changes designed to solve identified problems; resolve
- 288 residents' complaints; improve residents' lives and quality of
- 289 care; protect residents' rights, health, safety, and welfare;
- 290 and remove any barriers to the optimal operation of the state
- 291 ~~Long-Term Care~~ ombudsman program.
- 292 5. Contain recommendations from the state ~~Long-Term Care~~
- 293 ~~Ombudsman~~ council regarding program functions and activities and
- 294 recommendations for policy, regulatory, and statutory changes
- 295 designed to protect residents' rights, health, safety, and
- 296 welfare.
- 297 6. Contain any relevant recommendations from
- 298 representatives of the office ~~the local councils~~ regarding
- 299 program functions and activities.
- 300 Section 5. Section 400.0067, Florida Statutes, is amended
- 301 to read:
- 302 400.0067 State Long-Term Care Ombudsman Advisory Council;
- 303 duties; membership.—
- 304 (1) There is created, within the Office of State Long-Term
- 305 Care Ombudsman, the State Long-Term Care Ombudsman Advisory
- 306 Council.
- 307 (2) The state ~~Long-Term Care Ombudsman~~ council shall:
- 308 (a) Serve as an advisory body to assist the state

309 | ombudsman in developing strategies for recruitment, recognition,
 310 | and retention of ombudsmen reaching a consensus among local
 311 | ~~councils on issues affecting residents and impacting the optimal~~
 312 | ~~operation of the program.~~

313 | (b) Assist the state ombudsman in developing long-range
 314 | strategies and goals for the state ombudsman program. ~~Serve as~~
 315 | ~~an appellate body in receiving from the local councils~~
 316 | ~~complaints not resolved at the local level. Any individual~~
 317 | ~~member or members of the state council may enter any long-term~~
 318 | ~~care facility involved in an appeal, pursuant to the conditions~~
 319 | ~~specified in s. 400.0074(2).~~

320 | (c) Assist the state ombudsman by analyzing and commenting
 321 | on the development and implementation of laws, rules, and
 322 | regulations impacting the health, safety, welfare, and rights of
 323 | residents to discover, investigate, and determine the existence
 324 | ~~of abuse or neglect in any long-term care facility, and work~~
 325 | ~~with the adult protective services program as required in ss.~~
 326 | ~~415.101-415.113.~~

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

330 | ~~(d)(e)~~ Solicit Elicit and coordinate state, local, and
 331 | ~~voluntary organizational~~ assistance for the purpose of improving
 332 | the care received by residents as requested by the state
 333 | ombudsman.

334 | ~~(f) Assist the ombudsman in preparing the annual report~~
 335 | ~~described in s. 400.0065.~~

336 | (3) (a) The state ~~Long-Term Care Ombudsman~~ council shall be

337 | composed of:

338 | 1. Five certified ombudsmen from different districts of
 339 | the state ~~one active local council member elected by each local~~
 340 | ~~council plus three at-large members appointed by the Governor.~~

341 | 2. Three long-term care facility administrators or
 342 | providers of long-term care services, each representing a
 343 | nursing home, an assisted living facility, and an adult family
 344 | care home.

345 | 3. One resident of a long-term care facility or a family
 346 | member of a resident of a long-term care facility.

347 | 4. One attorney in good standing with The Florida Bar who
 348 | has experience in elder law, guardianship, long-term care
 349 | facility regulation, or another relevant area.

350 | 5. One physician, physician's assistant, advanced
 351 | registered nurse practitioner, or registered nurse who has
 352 | experience with geriatric patients.

353 | 6. One licensed pharmacist.

354 | 7. One registered dietician or nutritionist.

355 | 8. One clinical social worker licensed under chapter 491
 356 | with experience in providing mental health counseling or one
 357 | mental health counselor as defined in s. 394.455.

358 | 9. One executive director of an area agency on aging.

359 | 10. One at-large member.

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

365 (b)1. The state ombudsman ~~secretary, after consulting with~~
 366 ~~the ombudsman,~~ shall submit to the secretary ~~Governor~~ a list of
 367 individuals ~~persons~~ recommended for appointment to the ~~at-large~~
 368 ~~positions on the state council. The list shall not include the~~
 369 ~~name of any person who is currently serving on a local council.~~

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

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

377 4. The state council may perform its duties even if one or
 378 more positions are vacant.

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

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

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

389 (b) 4. The position of any member missing 50 percent or
 390 more of the ~~three~~ state council meetings within a 1-year period
 391 without cause may be declared vacant by the state ombudsman. The
 392 findings of the state ombudsman regarding cause shall be final

393 and binding.

394 (c)5. Any vacancy on the state council shall be filled in
395 the same manner as the original appointment.

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

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

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

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

417 (d)(e)1. The state council shall meet upon the call of the
418 state chair or upon the call of the ombudsman. The council shall
419 meet at least twice yearly ~~quarterly~~ but may meet more
420 frequently as needed.

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

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

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

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

433 400.0069 ~~Local~~ Long-term care ombudsman districts
 434 ~~councils~~; duties; appointment membership.-

435 (1)(a) The state ombudsman shall designate districts ~~local~~
 436 ~~long-term care ombudsman councils~~ to carry out the duties of the
 437 state Long-Term Care ombudsman program ~~within local communities~~.
 438 Each district ~~local council~~ shall function under the direction
 439 of the state ombudsman.

440 (b) The state ombudsman shall ensure that there are
 441 representatives of the office ~~is at least one local council~~
 442 ~~operating in each district of the department's planning and~~
 443 ~~service areas. The ombudsman may create additional local~~
 444 ~~councils~~ as necessary to ensure that residents throughout the
 445 state have adequate access to state Long-Term Care ombudsman
 446 program services. ~~The ombudsman, after approval from the~~
 447 ~~secretary, shall designate the jurisdictional boundaries of each~~
 448 ~~local council.~~

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

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

454 (b) Discover, investigate, and determine the existence of
 455 abuse, ~~or~~ neglect, or exploitation using in any long-term care
 456 ~~facility and to use~~ the procedures provided for in ss. 415.101-
 457 415.113 when applicable.

458 (c) Identify ~~Elicit, receive,~~ investigate, ~~respond to,~~ and
 459 resolve complaints made by or on behalf of residents relating to
 460 actions or omissions by providers or representatives of
 461 providers of long-term care services, other public or private
 462 agencies, guardians, representative payees, or other individuals
 463 that may adversely affect the health, safety, welfare, or rights
 464 of residents.

465 (d) When directed by the state ombudsman, review and, ~~if~~
 466 ~~necessary,~~ comment on all existing or proposed rules,
 467 regulations, and other governmental policies and actions
 468 relating to long-term care facilities that may potentially have
 469 an effect on the rights, health, safety, and welfare of
 470 residents.

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

475 (f) Recommend that the state ombudsman and the legal
 476 advocate seek administrative, legal, and other remedies to

477 protect the health, safety, welfare, and rights of ~~the~~
 478 residents.

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

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

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

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

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

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

501 ~~2. At least one registered nurse who has geriatric~~
 502 ~~experience;~~

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

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

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505 ~~5. At least six nursing home residents or representative~~
 506 ~~consumer advocates for nursing home residents;~~

507 ~~6. At least three residents of assisted living facilities~~
 508 ~~or adult family care homes or three representative consumer~~
 509 ~~advocates for alternative long-term care facility residents;~~

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

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

512 (b) The following individuals may not be appointed as
 513 ombudsmen:

514 1. The owner or representative of a long-term care
 515 facility.

516 2. A provider or representative of a provider of long-term
 517 care services.

518 3. An employee of the agency.

519 4. An employee of the department, except for
 520 representatives of the office.

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

522 6. An employee of the Agency for Persons with
 523 Disabilities. ~~In no case shall the medical director of a long-~~
 524 ~~term care facility or an employee of the agency, the department,~~
 525 ~~the Department of Children and Family Services, or the Agency~~
 526 ~~for Persons with Disabilities serve as a member or as an ex~~
 527 ~~officio member of a council.~~

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

530 1. Individuals wishing to join a local council shall
 531 submit an application to the state ombudsman or designee.

532 2. Successfully complete level 2 background screening

533 ~~pursuant to s. 430.0402 and chapter 435. The ombudsman shall~~
 534 ~~review the individual's application and advise the secretary of~~
 535 ~~his or her recommendation for approval or disapproval of the~~
 536 ~~candidate's membership on the local council. If the secretary~~
 537 ~~approves of the individual's membership, the individual shall be~~
 538 ~~appointed as a member of the local council.~~

539 (b) The state ombudsman shall approve or deny the
 540 appointment of the individual as an ombudsman. ~~The secretary may~~
 541 ~~rescind the ombudsman's approval of a member on a local council~~
 542 ~~at any time. If the secretary rescinds the approval of a member~~
 543 ~~on a local council, the ombudsman shall ensure that the~~
 544 ~~individual is immediately removed from the local council on~~
 545 ~~which he or she serves and the individual may no longer~~
 546 ~~represent the State Long Term Care Ombudsman Program until the~~
 547 ~~secretary provides his or her approval.~~

548 (c) Upon appointment as an ombudsman, the individual may
 549 participate in district activities but may not represent the
 550 office or conduct any authorized program duties until the
 551 individual has completed the initial training specified in s.
 552 400.0091(1) and has been certified by the state ombudsman.

553 (d) The state ombudsman, for good cause shown, may rescind
 554 the appointment of an individual as an ombudsman. After
 555 rescinding the appointment, the individual may not conduct any
 556 duties as an ombudsman and may not represent the office or the
 557 state ombudsman program. ~~A local council may recommend the~~
 558 ~~removal of one or more of its members by submitting to the~~
 559 ~~ombudsman a resolution adopted by a two-thirds vote of the~~
 560 ~~members of the council stating the name of the member or members~~

561 ~~recommended for removal and the reasons for the recommendation.~~
 562 ~~If such a recommendation is adopted by a local council, the~~
 563 ~~local council chair or district coordinator shall immediately~~
 564 ~~report the council's recommendation to the ombudsman. The~~
 565 ~~ombudsman shall review the recommendation of the local council~~
 566 ~~and advise the secretary of his or her recommendation regarding~~
 567 ~~removal of the council member or members.~~

568 ~~(6) (a) Each local council shall elect a chair for a term~~
 569 ~~of 1 year. There shall be no limitation on the number of terms~~
 570 ~~that an approved member of a local council may serve as chair.~~

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

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

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

587 ~~(7) Each local council shall meet upon the call of its~~
 588 ~~chair or upon the call of the ombudsman. Each local council~~

589 ~~shall meet at least once a month but may meet more frequently if~~
 590 ~~necessary.~~

591 (6)~~(8)~~ An ombudsman ~~A member of a local council~~ shall
 592 receive no compensation but shall, with approval from the state
 593 ombudsman, be reimbursed for travel expenses ~~both within and~~
 594 ~~outside the jurisdiction of the local council~~ in accordance with
 595 ~~the provisions of s. 112.061.~~

596 (7)~~(9)~~ The representatives of the office ~~local councils~~
 597 are authorized to call upon appropriate state agencies ~~of state~~
 598 ~~government~~ for ~~such~~ professional assistance as ~~may be~~ needed in
 599 the discharge of their duties, and such. ~~All~~ state agencies
 600 shall cooperate ~~with the local councils~~ in providing requested
 601 information and agency representation ~~at council meetings.~~

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

604 400.0070 Conflicts of interest.—

605 (1) A representative of the office ~~The ombudsman~~ shall
 606 not:

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

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

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

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

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

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

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

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

633 400.0071 State ~~Long Term Care~~ ombudsman program complaint
 634 procedures.—The department, in consultation with the state
 635 ombudsman, shall adopt rules implementing state and local
 636 complaint procedures. The rules must include procedures for
 637 receiving, investigating, and resolving complaints concerning
 638 the health, safety, welfare, and rights of residents+

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

641 ~~(2) Conducting investigations of a long term care facility~~
 642 ~~or an employee of a long term care facility subsequent to~~
 643 ~~receiving a complaint.~~

644 ~~(3) Conducting onsite administrative assessments of long~~

645 ~~term care facilities.~~

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

648 400.0073 Complaint ~~State and local ombudsman council~~
649 investigations.-

650 (1) A representative of the office ~~local council~~ shall
651 identify and investigate, ~~within a reasonable time after a~~
652 ~~complaint is made,~~ any complaint made by or on behalf of a
653 resident ~~that,~~ ~~a representative of a resident, or any other~~
654 ~~credible source based on an action or omission by an~~
655 ~~administrator, an employee, or a representative of a long-term~~
656 ~~care facility which might be:~~

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

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

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

671 ~~(2)-(4)~~ If a representative of the office ~~the ombudsman or~~
672 ~~any state or local council member~~ is not allowed to enter a

673 long-term care facility, the administrator of the facility shall
 674 be considered to have interfered with a representative of the
 675 office, ~~the state council, or the local council~~ in the
 676 performance of official duties as described in s. 400.0083(1)
 677 and to have committed a violation of this part. The
 678 representative of the office ~~ombudsman~~ shall report a facility's
 679 refusal to allow entry to the facility to the state ombudsman or
 680 designee, who shall then report the incident to the agency, and
 681 the agency shall record the report and take it into
 682 consideration when determining actions allowable under s.
 683 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
 684 429.71.

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

687 400.0074 ~~Local ombudsman council~~ Onsite administrative
 688 assessments.—

689 (1) Representatives of the office must ~~In addition to any~~
 690 ~~specific investigation conducted pursuant to a complaint, the~~
 691 ~~local council shall~~ conduct, at least annually, an onsite
 692 administrative assessment of each nursing home, assisted living
 693 facility, and adult family-care home ~~within its jurisdiction.~~
 694 This administrative assessment must be resident-centered and
 695 must shall focus on factors affecting the rights, health,
 696 safety, and welfare of the residents. ~~Each local council is~~
 697 ~~encouraged to conduct a similar onsite administrative assessment~~
 698 ~~of each additional long-term care facility within its~~
 699 ~~jurisdiction.~~

700 (2) An onsite administrative assessment is ~~conducted by a~~

701 ~~local council shall be~~ subject to the following conditions:

702 (a) To the extent possible and reasonable, the
 703 administrative assessment ~~assessments~~ shall not duplicate the
 704 efforts of ~~the agency~~ surveys and inspections conducted by state
 705 agencies in long-term care facilities ~~under part II of this~~
 706 ~~chapter and parts I and II of chapter 429.~~

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

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

714 (d) A representative of the office ~~local council member~~
 715 ~~physically~~ present for the administrative assessment must ~~shall~~
 716 identify himself or herself to the administrator or designee ~~and~~
 717 ~~cite the specific statutory authority for his or her assessment~~
 718 of the facility.

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

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

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

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

733 (3)~~(4)~~ An onsite administrative assessment may not be
 734 accomplished by forcible entry. However, if a representative of
 735 the office ombudsman or a state or local council member is not
 736 allowed to enter a long-term care facility, the administrator of
 737 the facility shall be considered to have interfered with a
 738 representative of the office, ~~the state council, or the local~~
 739 ~~council~~ in the performance of official duties as described in s.
 740 400.0083(1) and to have committed a violation of this part. The
 741 representative of the office ombudsman shall report the refusal
 742 by a facility to allow entry to the state ombudsman or designee,
 743 who shall then report the incident to the agency, and the agency
 744 shall record the report and take it into consideration when
 745 determining actions allowable under s. 400.102, s. 400.121, s.
 746 429.14, s. 429.19, s. 429.69, or s. 429.71.

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

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

753 400.0075 Complaint notification and resolution
 754 procedures.-

755 (1) (a) Any complaint ~~or problem~~ verified by a
 756 representative of the office an ombudsman council as a result of

757 an investigation may ~~or onsite administrative assessment, which~~
 758 ~~complaint or problem is determined to require remedial action by~~
 759 ~~the local council, shall~~ be identified and brought to the
 760 attention of the long-term care facility administrator subject
 761 to the confidentiality provisions of s. 400.0077 in writing.
 762 Upon receipt of the information ~~such document~~, the
 763 administrator, with the concurrence of the representative of the
 764 office ~~local council chair~~, shall establish target dates for
 765 taking appropriate remedial action. If, by the target date, the
 766 remedial action is not completed or forthcoming, the complaint
 767 shall be referred to the district manager ~~local council chair~~
 768 ~~may, after obtaining approval from the ombudsman and a majority~~
 769 ~~of the members of the local council:~~

770 1. ~~Extend the target date if the chair has reason to~~
 771 ~~believe such action would facilitate the resolution of the~~
 772 ~~complaint.~~

773 2. ~~In accordance with s. 400.0077, publicize the~~
 774 ~~complaint, the recommendations of the council, and the response~~
 775 ~~of the long-term care facility.~~

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

777 (b) If an ombudsman determines ~~the local council chair~~
 778 ~~believes~~ that the health, safety, welfare, or rights of a ~~the~~
 779 resident are in imminent danger, the ombudsman must immediately
 780 notify the district manager. ~~The district manager~~ chair shall
 781 ~~notify the ombudsman or legal advocate, who, after verifying~~
 782 that such imminent danger exists, must notify the appropriate
 783 state agencies, including law enforcement, the state ombudsman,
 784 and legal advocate to ensure the protection of ~~shall seek~~

785 ~~immediate legal or administrative remedies to protect the~~
 786 resident.

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

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

800 (a)~~1~~. In accordance with s. 400.0077, publicize the
 801 complaint, the recommendations of the representatives of the
 802 office ~~local or state council~~, and the response of the long-term
 803 care facility.

804 (b)~~2~~. Recommend to the department and the agency a series
 805 of facility reviews pursuant to s. 400.19, s. 429.34, or s.
 806 429.67 to ensure correction and nonrecurrence of the conditions
 807 that gave ~~give~~ rise to the complaint ~~complaints~~ against the ~~a~~
 808 long-term care facility.

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

812 (d)~~4~~. Recommend to the department and the agency that

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813 | procedures be initiated for action against ~~revocation~~ of the
 814 | long-term care facility's license in accordance with chapter
 815 | 120.

816 | ~~(b) If the state council chair believes that the health,~~
 817 | ~~safety, welfare, or rights of the resident are in imminent~~
 818 | ~~danger, the chair shall notify the ombudsman or legal advocate,~~
 819 | ~~who, after verifying that such imminent danger exists, shall~~
 820 | ~~seek immediate legal or administrative remedies to protect the~~
 821 | ~~resident.~~

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

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

829 | 400.0078 Citizen access to state ~~Long-Term Care~~ ombudsman
 830 | program services.—

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

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

839 | (a) The purpose of the state ~~Long-Term Care~~ ombudsman
 840 | program.7

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841 (b) The statewide toll-free telephone number and e-mail
 842 address for receiving complaints., ~~and~~

843 (c) Information that retaliatory action cannot be taken
 844 against a resident for presenting grievances or for exercising
 845 any other resident rights.

846 (d) Other relevant information regarding how to contact
 847 representatives of the office ~~program.~~

848

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

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

853 400.0079 Immunity.—

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

858 (2) Representatives of the office and ~~The ombudsman or any~~
 859 ~~person authorized by the ombudsman to act on behalf of the~~
 860 ~~office, as well as all~~ members of the state council ~~and local~~
 861 ~~councils,~~ shall be immune from any liability, civil or criminal,
 862 that otherwise might be incurred or imposed during the good
 863 faith performance of official duties.

864 Section 14. Section 400.0081, Florida Statutes, is amended
 865 to read:

866 400.0081 Access to facilities, residents, and records.—

867 (1) A long-term care facility shall provide
 868 representatives of the office, ~~the state council and its~~

869 ~~members, and the local councils and their members~~ access to:

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

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

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

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

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

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

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

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

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

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

892 (2) The department, in consultation with the state
893 ombudsman ~~and the state council~~, may adopt rules to establish
894 procedures to ensure access to facilities, residents, and
895 records as described in this section.

896 Section 15. Section 400.0083, Florida Statutes, is amended

897 to read:

898 400.0083 Interference; retaliation; penalties.—

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

903 (2) It shall be unlawful for any person, long-term care
 904 facility, or other entity to knowingly or willfully take action
 905 or retaliate against any resident, employee, or other person for
 906 filing a complaint with, providing information to, or otherwise
 907 cooperating with any representative of the office or, the state
 908 council, ~~or a local council~~.

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

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

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

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

917 400.0087 Department oversight; funding.—

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

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

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

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

934 (3) The department is responsible for ensuring that the
 935 office:

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

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

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

942 (d) Coordinates ombudsman services with Disability Rights
 943 Florida ~~the Advocacy Center for Persons with Disabilities~~ and
 944 with providers of legal services to residents ~~of long term care~~
 945 ~~facilities~~ in compliance with state and federal laws.

946 (4) The department shall also:

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

950 (b) Whenever necessary, act as liaison between agencies
 951 and branches of the federal and state governments and the office
 952 ~~State Long-Term Care Ombudsman Program~~.

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

955 400.0089 Complaint data reports.—The office shall maintain
 956 a statewide uniform reporting system to collect and analyze data
 957 relating to complaints and conditions in long-term care
 958 facilities and to residents for the purpose of identifying and
 959 resolving significant complaints ~~problems~~. The office shall
 960 publish quarterly and make readily available information
 961 pertaining to the number and types of complaints received by the
 962 state ~~Long-Term-Care~~ ombudsman program and shall include such
 963 information in the annual report required under s. 400.0065.

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

966 400.0091 Training.—The state ombudsman shall ensure that
 967 appropriate training is provided to all representatives
 968 ~~employees~~ of the office and ~~to the members of the state and~~
 969 ~~local councils~~.

970 (1) All representatives ~~state and local council members~~
 971 ~~and employees~~ of the office shall be given a minimum of 20 hours
 972 of training upon employment with the office or appointment as an
 973 ombudsman. ~~Ten approval as a state or local council member and~~
 974 ~~10~~ hours of continuing education is required annually
 975 thereafter.

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

- 979 (a) Resident confidentiality.
- 980 (b) Guardianships and powers of attorney.

- 981 (c) Medication administration.
- 982 (d) Care and medication of residents with dementia and
- 983 Alzheimer's disease.
- 984 (e) Accounting for residents' funds.
- 985 (f) Discharge rights and responsibilities.
- 986 (g) Cultural sensitivity.
- 987 (h) Any other topic related to residency within a long-
- 988 term care facility recommended by the secretary.

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

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

1000 20.41 Department of Elderly Affairs.—There is created a
 1001 Department of Elderly Affairs.

1002 (4) The department shall administer the Office of State
 1003 Long-Term Care Ombudsman Council, created by s. 400.0063
 1004 ~~400.0067,~~ and the ~~local long-term care ombudsman councils,~~
 1005 ~~created by s. 400.0069~~ and shall, as required by s. 712 of the
 1006 federal Older Americans Act of 1965, ensure that ~~both~~ the state
 1007 office operates and ~~local long-term care ombudsman councils~~
 1008 ~~operate~~ in compliance with the Older Americans Act.

1009 Section 20. Subsections (11) through (19) of section
 1010 400.021, Florida Statutes, are renumbered as subsections (10)
 1011 through (18), respectively, and present subsections (10) and
 1012 (18) are amended to read:

1013 400.021 Definitions.—When used in this part, unless the
 1014 context otherwise requires, the term:

1015 ~~(10) "Local ombudsman council" means a local long-term~~
 1016 ~~care ombudsman council established pursuant to s. 400.0069,~~
 1017 ~~located within the Older Americans Act planning and service~~
 1018 ~~areas.~~

1019 ~~(17)(18)~~ "State ombudsman program ~~council~~" means the
 1020 Office of State Long-Term Care Ombudsman Council established
 1021 pursuant to s. 400.0063 ~~400.0067~~.

1022 Section 21. Paragraph (c) of subsection (1) and
 1023 subsections (2) and (3) of section 400.022, Florida Statutes,
 1024 are amended to read:

1025 400.022 Residents' rights.—

1026 (1) All licensees of nursing home facilities shall adopt
 1027 and make public a statement of the rights and responsibilities
 1028 of the residents of such facilities and shall treat such
 1029 residents in accordance with the provisions of that statement.
 1030 The statement shall assure each resident the following:

1031 (c) Any entity or individual that provides health, social,
 1032 legal, or other services to a resident has the right to have
 1033 reasonable access to the resident. The resident has the right to
 1034 deny or withdraw consent to access at any time by any entity or
 1035 individual. Notwithstanding the visiting policy of the facility,
 1036 the following individuals must be permitted immediate access to

1037 the resident:

1038 1. Any representative of the federal or state government,
 1039 including, but not limited to, representatives of the Department
 1040 of Children and Family Services, the Department of Health, the
 1041 Agency for Health Care Administration, the Office of the
 1042 Attorney General, and the Department of Elderly Affairs; any law
 1043 enforcement officer; representatives ~~members~~ of the state ~~or~~
 1044 ~~local~~ ombudsman program ~~council~~; and the resident's individual
 1045 physician.

1046 2. Subject to the resident's right to deny or withdraw
 1047 consent, immediate family or other relatives of the resident.

1048

1049 The facility must allow representatives of the state ~~Long-Term~~
 1050 ~~Care~~ ombudsman program ~~Council~~ to examine a resident's clinical
 1051 records with the permission of the resident or the resident's
 1052 legal representative and consistent with state law.

1053 (2) The licensee for each nursing home shall orally inform
 1054 the resident of the resident's rights and provide a copy of the
 1055 statement required by subsection (1) to each resident or the
 1056 resident's legal representative at or before the resident's
 1057 admission to a facility. The licensee shall provide a copy of
 1058 the resident's rights to each staff member of the facility. Each
 1059 such licensee shall prepare a written plan and provide
 1060 appropriate staff training to implement ~~the provisions of this~~
 1061 section. The written statement of rights must include a
 1062 statement that a resident may file a complaint with the agency
 1063 or state ~~local~~ ombudsman program ~~council~~. The statement must be
 1064 in boldfaced type and shall include the ~~name, address, and~~

1065 | telephone number and e-mail address of the state ~~numbers of the~~
 1066 | ~~local~~ ombudsman program council and the telephone number of the
 1067 | central abuse hotline where complaints may be lodged.

1068 | (3) Any violation of the resident's rights set forth in
 1069 | this section shall constitute grounds for action by the agency
 1070 | under ~~the provisions of~~ s. 400.102, s. 400.121, or part II of
 1071 | chapter 408. In order to determine whether the licensee is
 1072 | adequately protecting residents' rights, the licensure
 1073 | inspection of the facility shall include private informal
 1074 | conversations with a sample of residents to discuss residents'
 1075 | experiences within the facility with respect to rights specified
 1076 | in this section and general compliance with standards, and
 1077 | consultation with the state ombudsman program council ~~in the~~
 1078 | ~~local planning and service area of the Department of Elderly~~
 1079 | ~~Affairs in which the nursing home is located.~~

1080 | Section 22. Subsections (8) and (9) and (11) through (14)
 1081 | of section 400.0255, Florida Statutes, are amended to read:

1082 | 400.0255 Resident transfer or discharge; requirements and
 1083 | procedures; hearings.-

1084 | (8) The notice required by subsection (7) must be in
 1085 | writing and must contain all information required by state and
 1086 | federal law, rules, or regulations applicable to Medicaid or
 1087 | Medicare cases. The agency shall develop a standard document to
 1088 | be used by all facilities licensed under this part for purposes
 1089 | of notifying residents of a discharge or transfer. Such document
 1090 | must include a means for a resident to request the state local
 1091 | ~~long-term care~~ ombudsman program council to review the notice
 1092 | and request information about or assistance with initiating a

1093 fair hearing with the department's Office of Appeals Hearings.
 1094 In addition to any other pertinent information included, the
 1095 form shall specify the reason allowed under federal or state law
 1096 that the resident is being discharged or transferred, with an
 1097 explanation to support this action. Further, the form shall
 1098 state the effective date of the discharge or transfer and the
 1099 location to which the resident is being discharged or
 1100 transferred. The form shall clearly describe the resident's
 1101 appeal rights and the procedures for filing an appeal, including
 1102 the right to request the state ~~local~~ ombudsman program ~~council~~
 1103 to review the notice of discharge or transfer. A copy of the
 1104 notice must be placed in the resident's clinical record, and a
 1105 copy must be transmitted to the resident's legal guardian or
 1106 representative and to the state ~~local~~ ombudsman program ~~council~~
 1107 within 5 business days after signature by the resident or
 1108 resident designee.

1109 (9) A resident may request that the state ~~local~~ ombudsman
 1110 program ~~council~~ review any notice of discharge or transfer given
 1111 to the resident. When requested by a resident to review a notice
 1112 of discharge or transfer, the state ~~local~~ ombudsman program
 1113 ~~council~~ shall do so within 7 days after receipt of the request.
 1114 The nursing home administrator, or the administrator's designee,
 1115 must forward the request for review contained in the notice to
 1116 the state ~~local~~ ombudsman program ~~council~~ within 24 hours after
 1117 such request is submitted. Failure to forward the request within
 1118 24 hours after the request is submitted shall toll the running
 1119 of the 30-day advance notice period until the request has been
 1120 forwarded.

1121 (11) Notwithstanding paragraph (10)(b), an emergency
 1122 discharge or transfer may be implemented as necessary pursuant
 1123 to state or federal law during the period of time after the
 1124 notice is given and before the time a hearing decision is
 1125 rendered. Notice of an emergency discharge or transfer to the
 1126 resident, the resident's legal guardian or representative, and
 1127 the state ~~local~~ ombudsman program ~~council~~ if requested pursuant
 1128 to subsection (9) must be by telephone or in person. This notice
 1129 shall be given before the transfer, if possible, or as soon
 1130 thereafter as practicable. A representative of the state ~~local~~
 1131 ombudsman program ~~council~~ conducting a review under this
 1132 subsection shall do so within 24 hours after receipt of the
 1133 request. The resident's file must be documented to show who was
 1134 contacted, whether the contact was by telephone or in person,
 1135 and the date and time of the contact. If the notice is not given
 1136 in writing, written notice meeting the requirements of
 1137 subsection (8) must be given the next working day.

1138 (12) After receipt of any notice required under this
 1139 section, the state ~~local~~ ombudsman program ~~council~~ may request a
 1140 private informal conversation with a resident to whom the notice
 1141 is directed, and, if known, a family member or the resident's
 1142 legal guardian or designee, to ensure that the facility is
 1143 proceeding with the discharge or transfer in accordance with ~~the~~
 1144 ~~requirements of~~ this section. If requested, the state ~~local~~
 1145 ombudsman program ~~council~~ shall assist the resident with filing
 1146 an appeal of the proposed discharge or transfer.

1147 (13) The following persons must be present at all hearings
 1148 authorized under this section:

1149 (a) The resident, or the resident's legal representative
1150 or designee.

1151 (b) The facility administrator, or the facility's legal
1152 representative or designee.

1153

1154 A representative of the state ~~local long-term care~~ ombudsman
1155 program council may be present at all hearings authorized by
1156 this section.

1157 (14) In any hearing under this section, the following
1158 information concerning the parties shall be confidential and
1159 exempt from ~~the provisions of~~ s. 119.07(1):

1160 (a) Names and addresses.

1161 (b) Medical services provided.

1162 (c) Social and economic conditions or circumstances.

1163 (d) Evaluation of personal information.

1164 (e) Medical data, including diagnosis and past history of
1165 disease or disability.

1166 (f) Any information received verifying income eligibility
1167 and amount of medical assistance payments. Income information
1168 received from the Social Security Administration or the Internal
1169 Revenue Service must be safeguarded according to the
1170 requirements of the agency that furnished the data.

1171

1172 The exemption created by this subsection does not prohibit
1173 access to such information by the state ombudsman program ~~a~~
1174 ~~local long-term care ombudsman council~~ upon request, by a
1175 reviewing court if such information is required to be part of
1176 the record upon subsequent review, or as specified in s. 24(a),

1177 Art. I of the State Constitution.

1178 Section 23. Subsection (2) of section 400.1413, Florida
 1179 Statutes, is amended to read:

1180 400.1413 Volunteers in nursing homes.-

1181 (2) This section does not affect the activities of the
 1182 ~~state or local long-term care~~ ombudsman program ~~councils~~
 1183 authorized under part I.

1184 Section 24. Paragraph (d) of subsection (5) of section
 1185 400.162, Florida Statutes, is amended to read:

1186 400.162 Property and personal affairs of residents.-

1187 (5)

1188 (d) If, at any time during the period for which a license
 1189 is issued, a licensee that has not purchased a surety bond or
 1190 entered into a self-insurance agreement, as provided in
 1191 paragraphs (b) and (c), is requested to provide safekeeping for
 1192 the personal funds of a resident, the licensee shall notify the
 1193 agency of the request and make application for a surety bond or
 1194 for participation in a self-insurance agreement within 7 days
 1195 after ~~of~~ the request, exclusive of weekends and holidays. Copies
 1196 of the application, along with written documentation of related
 1197 correspondence with an insurance agency or group, shall be
 1198 maintained by the licensee for review by the agency and the
 1199 ~~state Nursing Home and Long-Term Care Facility~~ ombudsman program
 1200 Council.

1201 Section 25. Subsections (1) and (4) of section 400.19,
 1202 Florida Statutes, are amended to read:

1203 400.19 Right of entry and inspection.-

1204 (1) In accordance with part II of chapter 408, the agency

1205 and any duly designated officer or employee thereof or a
 1206 representative member of the state ~~Long-Term Care~~ ombudsman
 1207 program Council ~~or the local long-term care ombudsman council~~
 1208 shall have the right to enter upon and into the premises of any
 1209 facility licensed pursuant to this part, or any distinct nursing
 1210 home unit of a hospital licensed under chapter 395 or any
 1211 freestanding facility licensed under chapter 395 that provides
 1212 extended care or other long-term care services, at any
 1213 reasonable time in order to determine the state of compliance
 1214 with ~~the provisions of~~ this part, part II of chapter 408, and
 1215 applicable rules in force pursuant thereto. The agency shall,
 1216 within 60 days after receipt of a complaint made by a resident
 1217 or resident's representative, complete its investigation and
 1218 provide to the complainant its findings and resolution.

1219 (4) The agency shall conduct unannounced onsite facility
 1220 reviews following written verification of licensee noncompliance
 1221 in instances in which the state ombudsman program ~~a long-term~~
 1222 ~~care ombudsman council~~, pursuant to ss. 400.0071 and 400.0075,
 1223 has received a complaint and has documented deficiencies in
 1224 resident care or in the physical plant of the facility that
 1225 threaten the health, safety, or security of residents, or when
 1226 the agency documents through inspection that conditions in a
 1227 facility present a direct or indirect threat to the health,
 1228 safety, or security of residents. However, the agency shall
 1229 conduct unannounced onsite reviews every 3 months of each
 1230 facility while the facility has a conditional license.
 1231 Deficiencies related to physical plant do not require followup
 1232 reviews after the agency has determined that correction of the

1233 deficiency has been accomplished and that the correction is of
 1234 the nature that continued compliance can be reasonably expected.

1235 Section 26. Subsection (1) of section 400.191, Florida
 1236 Statutes, is amended to read:

1237 400.191 Availability, distribution, and posting of reports
 1238 and records.—

1239 (1) The agency shall provide information to the public
 1240 about all of the licensed nursing home facilities operating in
 1241 the state. The agency shall, within 60 days after a licensure
 1242 inspection visit or within 30 days after any interim visit to a
 1243 facility, send copies of the inspection reports to the state
 1244 ~~local long-term care~~ ombudsman program council, the agency's
 1245 local office, and a public library or the county seat for the
 1246 county in which the facility is located. The agency may provide
 1247 electronic access to inspection reports as a substitute for
 1248 sending copies.

1249 Section 27. Subsection (6) and paragraph (c) of subsection
 1250 (7) of section 400.23, Florida Statutes, is amended to read:

1251 400.23 Rules; evaluation and deficiencies; licensure
 1252 status.—

1253 (6) Before ~~Prior to~~ conducting a survey of the facility,
 1254 the survey team shall obtain a copy of the state ~~local long-term~~
 1255 ~~care~~ ombudsman program council report on the facility. Problems
 1256 noted in the report shall be incorporated into and followed up
 1257 through the agency's inspection process. This procedure does not
 1258 preclude the state ~~local long-term care~~ ombudsman program
 1259 ~~council~~ from requesting the agency to conduct a followup visit
 1260 to the facility.

1261 (7) The agency shall, at least every 15 months, evaluate
 1262 all nursing home facilities and make a determination as to the
 1263 degree of compliance by each licensee with the established rules
 1264 adopted under this part as a basis for assigning a licensure
 1265 status to that facility. The agency shall base its evaluation on
 1266 the most recent inspection report, taking into consideration
 1267 findings from other official reports, surveys, interviews,
 1268 investigations, and inspections. In addition to license
 1269 categories authorized under part II of chapter 408, the agency
 1270 shall assign a licensure status of standard or conditional to
 1271 each nursing home.

1272 (c) In evaluating the overall quality of care and services
 1273 and determining whether the facility will receive a conditional
 1274 or standard license, the agency shall consider the needs and
 1275 limitations of residents in the facility and the results of
 1276 interviews and surveys of a representative sampling of
 1277 residents, families of residents, representatives of the state
 1278 ombudsman program ~~council members in the planning and service~~
 1279 ~~area in which the facility is located~~, guardians of residents,
 1280 and staff of the nursing home facility.

1281 Section 28. Paragraph (a) of subsection (3), paragraph (f)
 1282 of subsection (5), and subsection (6) of section 400.235,
 1283 Florida Statutes, are amended to read:

1284 400.235 Nursing home quality and licensure status; Gold
 1285 Seal Program.—

1286 (3) (a) The Gold Seal Program shall be developed and
 1287 implemented by the Governor's Panel on Excellence in Long-Term
 1288 Care which shall operate under the authority of the Executive

1289 Office of the Governor. The panel shall be composed of three
 1290 persons appointed by the Governor, to include a consumer
 1291 advocate for senior citizens and two persons with expertise in
 1292 the fields of quality management, service delivery excellence,
 1293 or public sector accountability; three persons appointed by the
 1294 Secretary of Elderly Affairs, to include an active member of a
 1295 nursing facility family and resident care council and a member
 1296 of the University Consortium on Aging; a representative of the
 1297 Office of State Long-Term Care Ombudsman; one person appointed
 1298 by the Florida Life Care Residents Association; one person
 1299 appointed by the State Surgeon General; two persons appointed by
 1300 the Secretary of Health Care Administration; one person
 1301 appointed by the Florida Association of Homes for the Aging; and
 1302 one person appointed by the Florida Health Care Association.
 1303 Vacancies on the panel shall be filled in the same manner as the
 1304 original appointments.

1305 (5) Facilities must meet the following additional criteria
 1306 for recognition as a Gold Seal Program facility:

1307 (f) Evidence an outstanding record regarding the number
 1308 and types of substantiated complaints reported to the Office of
 1309 State Long-Term Care Ombudsman ~~Council~~ within the 30 months
 1310 preceding application for the program.

1311
 1312 A facility assigned a conditional licensure status may not
 1313 qualify for consideration for the Gold Seal Program until after
 1314 it has operated for 30 months with no class I or class II
 1315 deficiencies and has completed a regularly scheduled relicensure
 1316 survey.

1317 (6) The agency, nursing facility industry organizations,
 1318 consumers, Office of State Long-Term Care Ombudsman Council, and
 1319 members of the community may recommend to the Governor
 1320 facilities that meet the established criteria for consideration
 1321 for and award of the Gold Seal. The panel shall review nominees
 1322 and make a recommendation to the Governor for final approval and
 1323 award. The decision of the Governor is final and is not subject
 1324 to appeal.

1325 Section 29. Paragraph (a) of subsection (1) of section
 1326 415.1034, Florida Statutes, is amended to read:

1327 415.1034 Mandatory reporting of abuse, neglect, or
 1328 exploitation of vulnerable adults; mandatory reports of death.-

1329 (1) MANDATORY REPORTING.-

1330 (a) Any person, including, but not limited to, any:

1331 1. Physician, osteopathic physician, medical examiner,
 1332 chiropractic physician, nurse, paramedic, emergency medical
 1333 technician, or hospital personnel engaged in the admission,
 1334 examination, care, or treatment of vulnerable adults;

1335 2. Health professional or mental health professional other
 1336 than one listed in subparagraph 1.;

1337 3. Practitioner who relies solely on spiritual means for
 1338 healing;

1339 4. Nursing home staff; assisted living facility staff;
 1340 adult day care center staff; adult family-care home staff;
 1341 social worker; or other professional adult care, residential, or
 1342 institutional staff;

1343 5. State, county, or municipal criminal justice employee
 1344 or law enforcement officer;

1345 6. ~~An~~ Employee of the Department of Business and
 1346 Professional Regulation conducting inspections of public lodging
 1347 establishments under s. 509.032;

1348 7. Florida advocacy council member or representative of
 1349 the Office of State Long-Term Care Ombudsman ~~council member~~; or

1350 8. Bank, savings and loan, or credit union officer,
 1351 trustee, or employee,

1352
 1353 who knows, or has reasonable cause to suspect, that a vulnerable
 1354 adult has been or is being abused, neglected, or exploited shall
 1355 immediately report such knowledge or suspicion to the central
 1356 abuse hotline.

1357 Section 30. Subsection (1) of section 415.104, Florida
 1358 Statutes, is amended to read:

1359 415.104 Protective investigations of cases of abuse,
 1360 neglect, or exploitation of vulnerable adults; transmittal of
 1361 records to state attorney.—

1362 (1) The department shall, upon receipt of a report
 1363 alleging abuse, neglect, or exploitation of a vulnerable adult,
 1364 begin within 24 hours a protective investigation of the facts
 1365 alleged therein. If a caregiver refuses to allow the department
 1366 to begin a protective investigation or interferes with the
 1367 conduct of such an investigation, the appropriate law
 1368 enforcement agency shall be contacted for assistance. If, during
 1369 the course of the investigation, the department has reason to
 1370 believe that the abuse, neglect, or exploitation is perpetrated
 1371 by a second party, the appropriate law enforcement agency and
 1372 state attorney shall be orally notified. The department and the

1373 law enforcement agency shall cooperate to allow the criminal
 1374 investigation to proceed concurrently with, and not be hindered
 1375 by, the protective investigation. The department shall make a
 1376 preliminary written report to the law enforcement agencies
 1377 within 5 working days after the oral report. The department
 1378 shall, within 24 hours after receipt of the report, notify the
 1379 appropriate Florida local advocacy council, or state long-term
 1380 ~~care~~ ombudsman program ~~council~~, when appropriate, that an
 1381 alleged abuse, neglect, or exploitation perpetrated by a second
 1382 party has occurred. Notice to the Florida local advocacy council
 1383 or state long-term care ombudsman program ~~council~~ may be
 1384 accomplished orally or in writing and shall include the name and
 1385 location of the vulnerable adult alleged to have been abused,
 1386 neglected, or exploited and the nature of the report.

1387 Section 31. Subsection (8) of section 415.1055, Florida
 1388 Statutes, is amended to read:

1389 415.1055 Notification to administrative entities.—

1390 (8) At the conclusion of a protective investigation at a
 1391 facility, the department shall notify either the Florida local
 1392 advocacy council or state long-term care ombudsman program
 1393 ~~council~~ of the results of the investigation. This notification
 1394 must be in writing.

1395 Section 32. Subsection (2) of section 415.106, Florida
 1396 Statutes, is amended to read:

1397 415.106 Cooperation by the department and criminal justice
 1398 and other agencies.—

1399 (2) To ensure coordination, communication, and cooperation
 1400 with the investigation of abuse, neglect, or exploitation of

1401 vulnerable adults, the department shall develop and maintain
 1402 interprogram agreements or operational procedures among
 1403 appropriate departmental programs and the Office of State Long-
 1404 Term Care Ombudsman Council, the Florida Statewide Advocacy
 1405 Council, and other agencies that provide services to vulnerable
 1406 adults. These agreements or procedures must cover such subjects
 1407 as the appropriate roles and responsibilities of the department
 1408 in identifying and responding to reports of abuse, neglect, or
 1409 exploitation of vulnerable adults; the provision of services;
 1410 and related coordinated activities.

1411 Section 33. Paragraph (g) of subsection (3) of section
 1412 415.107, Florida Statutes, is amended to read:

1413 415.107 Confidentiality of reports and records.—

1414 (3) Access to all records, excluding the name of the
 1415 reporter which shall be released only as provided in subsection
 1416 (6), shall be granted only to the following persons, officials,
 1417 and agencies:

1418 (g) Any appropriate official of the Florida advocacy
 1419 council or state long-term care ombudsman program council
 1420 investigating a report of known or suspected abuse, neglect, or
 1421 exploitation of a vulnerable adult.

1422 Section 34. Subsection (20) of section 429.02, Florida
 1423 Statutes, is amended to read:

1424 429.02 Definitions.—When used in this part, the term:

1425 (20) "Resident's representative or designee" means a
 1426 person other than the owner, or an agent or employee of the
 1427 facility, designated in writing by the resident, if legally
 1428 competent, to receive notice of changes in the contract executed

1429 pursuant to s. 429.24; to receive notice of and to participate
 1430 in meetings between the resident and the facility owner,
 1431 administrator, or staff concerning the rights of the resident;
 1432 to assist the resident in contacting the state ombudsman program
 1433 ~~council~~ if the resident has a complaint against the facility; or
 1434 to bring legal action on behalf of the resident pursuant to s.
 1435 429.29.

1436 Section 35. Paragraph (b) of subsection (3) of section
 1437 429.07, Florida Statutes, is amended to read:

1438 429.07 License required; fee.—

1439 (3) In addition to the requirements of s. 408.806, each
 1440 license granted by the agency must state the type of care for
 1441 which the license is granted. Licenses shall be issued for one
 1442 or more of the following categories of care: standard, extended
 1443 congregate care, limited nursing services, or limited mental
 1444 health.

1445 (b) An extended congregate care license shall be issued to
 1446 facilities providing, directly or through contract, services
 1447 beyond those authorized in paragraph (a), including services
 1448 performed by persons licensed under part I of chapter 464 and
 1449 supportive services, as defined by rule, to persons who would
 1450 otherwise be disqualified from continued residence in a facility
 1451 licensed under this part.

1452 1. In order for extended congregate care services to be
 1453 provided, the agency must first determine that all requirements
 1454 established in law and rule are met and must specifically
 1455 designate, on the facility's license, that such services may be
 1456 provided and whether the designation applies to all or part of

1457 the facility. Such designation may be made at the time of
 1458 initial licensure or relicensure, or upon request in writing by
 1459 a licensee under this part and part II of chapter 408. The
 1460 notification of approval or the denial of the request shall be
 1461 made in accordance with part II of chapter 408. Existing
 1462 facilities qualifying to provide extended congregate care
 1463 services must have maintained a standard license and may not
 1464 have been subject to administrative sanctions during the
 1465 previous 2 years, or since initial licensure if the facility has
 1466 been licensed for less than 2 years, for any of the following
 1467 reasons:

- 1468 a. A class I or class II violation;
- 1469 b. Three or more repeat or recurring class III violations
 1470 of identical or similar resident care standards from which a
 1471 pattern of noncompliance is found by the agency;
- 1472 c. Three or more class III violations that were not
 1473 corrected in accordance with the corrective action plan approved
 1474 by the agency;
- 1475 d. Violation of resident care standards which results in
 1476 requiring the facility to employ the services of a consultant
 1477 pharmacist or consultant dietitian;
- 1478 e. Denial, suspension, or revocation of a license for
 1479 another facility licensed under this part in which the applicant
 1480 for an extended congregate care license has at least 25 percent
 1481 ownership interest; or
- 1482 f. Imposition of a moratorium pursuant to this part or
 1483 part II of chapter 408 or initiation of injunctive proceedings.

1484 2. A facility that is licensed to provide extended

1485 | congregate care services shall maintain a written progress
 1486 | report on each person who receives services which describes the
 1487 | type, amount, duration, scope, and outcome of services that are
 1488 | rendered and the general status of the resident's health. A
 1489 | registered nurse, or appropriate designee, representing the
 1490 | agency shall visit the facility at least quarterly to monitor
 1491 | residents who are receiving extended congregate care services
 1492 | and to determine whether ~~if~~ the facility is in compliance with
 1493 | this part, part II of chapter 408, and relevant rules. One of
 1494 | the visits may be in conjunction with the regular survey. The
 1495 | monitoring visits may be provided through contractual
 1496 | arrangements with appropriate community agencies. A registered
 1497 | nurse shall serve as part of the team that inspects the
 1498 | facility. The agency may waive one of the required yearly
 1499 | monitoring visits for a facility that has been licensed for at
 1500 | least 24 months to provide extended congregate care services,
 1501 | if, during the inspection, the registered nurse determines that
 1502 | extended congregate care services are being provided
 1503 | appropriately, and if the facility has no class I or class II
 1504 | violations and no uncorrected class III violations. The agency
 1505 | must first consult with the state ~~long-term care~~ ombudsman
 1506 | program council for the area in which the facility is located to
 1507 | determine whether ~~if~~ any complaints have been made and
 1508 | substantiated about the quality of services or care. The agency
 1509 | may not waive one of the required yearly monitoring visits if
 1510 | complaints have been made and substantiated.

1511 | 3. A facility that is licensed to provide extended
 1512 | congregate care services must:

- 1513 a. Demonstrate the capability to meet unanticipated
 1514 resident service needs.
- 1515 b. Offer a physical environment that promotes a homelike
 1516 setting, provides for resident privacy, promotes resident
 1517 independence, and allows sufficient congregate space as defined
 1518 by rule.
- 1519 c. Have sufficient staff available, taking into account
 1520 the physical plant and firesafety features of the building, to
 1521 assist with the evacuation of residents in an emergency.
- 1522 d. Adopt and follow policies and procedures that maximize
 1523 resident independence, dignity, choice, and decisionmaking to
 1524 permit residents to age in place, so that moves due to changes
 1525 in functional status are minimized or avoided.
- 1526 e. Allow residents or, if applicable, a resident's
 1527 representative, designee, surrogate, guardian, or attorney in
 1528 fact to make a variety of personal choices, participate in
 1529 developing service plans, and share responsibility in
 1530 decisionmaking.
- 1531 f. Implement the concept of managed risk.
- 1532 g. Provide, directly or through contract, the services of
 1533 a person licensed under part I of chapter 464.
- 1534 h. In addition to the training mandated in s. 429.52,
 1535 provide specialized training as defined by rule for facility
 1536 staff.
- 1537 4. A facility that is licensed to provide extended
 1538 congregate care services is exempt from the criteria for
 1539 continued residency set forth in rules adopted under s. 429.41.
 1540 A licensed facility must adopt its own requirements within

1541 guidelines for continued residency set forth by rule. However,
 1542 the facility may not serve residents who require 24-hour nursing
 1543 supervision. A licensed facility that provides extended
 1544 congregate care services must also provide each resident with a
 1545 written copy of facility policies governing admission and
 1546 retention.

1547 5. The primary purpose of extended congregate care
 1548 services is to allow residents, as they become more impaired,
 1549 the option of remaining in a familiar setting from which they
 1550 would otherwise be disqualified for continued residency. A
 1551 facility licensed to provide extended congregate care services
 1552 may also admit an individual who exceeds the admission criteria
 1553 for a facility with a standard license, if the individual is
 1554 determined appropriate for admission to the extended congregate
 1555 care facility.

1556 6. Before the admission of an individual to a facility
 1557 licensed to provide extended congregate care services, the
 1558 individual must undergo a medical examination as provided in s.
 1559 429.26(4) and the facility must develop a preliminary service
 1560 plan for the individual.

1561 7. When a facility can no longer provide or arrange for
 1562 services in accordance with the resident's service plan and
 1563 needs and the facility's policy, the facility shall make
 1564 arrangements for relocating the person in accordance with s.
 1565 429.28(1)(k).

1566 8. Failure to provide extended congregate care services
 1567 may result in denial of extended congregate care license
 1568 renewal.

1569 Section 36. Subsection (9) of section 429.19, Florida
 1570 Statutes, is amended to read:

1571 429.19 Violations; imposition of administrative fines;
 1572 grounds.—

1573 (9) The agency shall develop and disseminate an annual
 1574 list of all facilities sanctioned or fined for violations of
 1575 state standards, the number and class of violations involved,
 1576 the penalties imposed, and the current status of cases. The list
 1577 shall be disseminated, at no charge, to the Department of
 1578 Elderly Affairs, the Department of Health, the Department of
 1579 Children and Family Services, the Agency for Persons with
 1580 Disabilities, the area agencies on aging, the Florida Statewide
 1581 Advocacy Council, and the state ~~and local~~ ombudsman program
 1582 ~~councils~~. The Department of Children and Family Services shall
 1583 disseminate the list to service providers under contract to the
 1584 department who are responsible for referring persons to a
 1585 facility for residency. The agency may charge a fee commensurate
 1586 with the cost of printing and postage to other interested
 1587 parties requesting a copy of this list. This information may be
 1588 provided electronically or through the agency's Internet site.

1589 Section 37. Subsection (8) of section 429.26, Florida
 1590 Statutes, is amended to read:

1591 429.26 Appropriateness of placements; examinations of
 1592 residents.—

1593 (8) The Department of Children and Family Services may
 1594 require an examination for supplemental security income and
 1595 optional state supplementation recipients residing in facilities
 1596 at any time and shall provide the examination whenever a

1597 resident's condition requires it. Any facility administrator;
 1598 personnel of the agency, the department, or the Department of
 1599 Children and Family Services; or representative of the state
 1600 ~~long-term care~~ ombudsman program ~~council member~~ who believes a
 1601 resident needs to be evaluated shall notify the resident's case
 1602 manager, who shall take appropriate action. A report of the
 1603 examination findings shall be provided to the resident's case
 1604 manager and the facility administrator to help the administrator
 1605 meet his or her responsibilities under subsection (1).

1606 Section 38. Subsection (2) and paragraph (b) of subsection
 1607 (3) of section 429.28, Florida Statutes, are amended to read:

1608 429.28 Resident bill of rights.-

1609 (2) The administrator of a facility shall ensure that a
 1610 written notice of the rights, obligations, and prohibitions set
 1611 forth in this part is posted in a prominent place in each
 1612 facility and read or explained to residents who cannot read.
 1613 This notice shall include the statewide toll-free telephone
 1614 number and e-mail address ~~name, address, and telephone numbers~~
 1615 of the state ~~local~~ ombudsman program ~~council~~ and central abuse
 1616 hotline and, when applicable, the Advocacy Center for Persons
 1617 with Disabilities, Inc., and the Florida local advocacy council,
 1618 where complaints may be lodged. The facility must ensure a
 1619 resident's access to a telephone to call the state ~~local~~
 1620 ombudsman program ~~council~~, central abuse hotline, Advocacy
 1621 Center for Persons with Disabilities, Inc., and the Florida
 1622 local advocacy council.

1623 (3)

1624 (b) In order to determine whether the facility is

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1625 adequately protecting residents' rights, the biennial survey
 1626 shall include private informal conversations with a sample of
 1627 residents and consultation with the state ombudsman program
 1628 ~~council~~ in the planning and service area in which the facility
 1629 is located to discuss residents' experiences within the
 1630 facility.

1631 Section 39. Section 429.34, Florida Statutes, is amended
 1632 to read:

1633 429.34 Right of entry and inspection.—In addition to the
 1634 requirements of s. 408.811, any duly designated officer or
 1635 employee of the department, the Department of Children and
 1636 Families ~~Family Services~~, the Medicaid Fraud Control Unit of the
 1637 Office of the Attorney General, the state or local fire marshal,
 1638 or a representative member of the state ~~or local long-term care~~
 1639 ombudsman program council shall have the right to enter
 1640 unannounced upon and into the premises of any facility licensed
 1641 pursuant to this part in order to determine the state of
 1642 compliance with ~~the provisions of~~ this part, part II of chapter
 1643 408, and applicable rules. Data collected by the state ~~or local~~
 1644 ~~long-term care~~ ombudsman program councils or the state or local
 1645 advocacy councils may be used by the agency in investigations
 1646 involving violations of regulatory standards.

1647 Section 40. Subsection (2) of section 429.35, Florida
 1648 Statutes, is amended to read:

1649 429.35 Maintenance of records; reports.—

1650 (2) Within 60 days after the date of the biennial
 1651 inspection visit required under s. 408.811 or within 30 days
 1652 after the date of any interim visit, the agency shall forward

1653 the results of the inspection to the state ~~local~~ ombudsman
 1654 program council ~~in whose planning and service area, as defined~~
 1655 ~~in part II of chapter 400, the facility is located;~~ to at least
 1656 one public library or, in the absence of a public library, the
 1657 county seat in the county in which the inspected assisted living
 1658 facility is located; and, when appropriate, to the district
 1659 Adult Services and Mental Health Program Offices.

1660 Section 41. Subsection (2) of section 429.85, Florida
 1661 Statutes, is amended to read:

1662 429.85 Residents' bill of rights.—

1663 (2) The provider shall ensure that residents and their
 1664 legal representatives are made aware of the rights, obligations,
 1665 and prohibitions set forth in this part. Residents must also be
 1666 given the statewide toll-free telephone number and e-mail
 1667 address of the state ombudsman program and the telephone number
 1668 of names, addresses, and telephone numbers of the local
 1669 ~~ombudsman council~~ and the central abuse hotline where they may
 1670 lodge complaints.

1671 Section 42. Subsection (17) of section 744.444, Florida
 1672 Statutes, is amended to read:

1673 744.444 Power of guardian without court approval.—Without
 1674 obtaining court approval, a plenary guardian of the property, or
 1675 a limited guardian of the property within the powers granted by
 1676 the order appointing the guardian or an approved annual or
 1677 amended guardianship report, may:

1678 (17) Provide confidential information about a ward that is
 1679 related to an investigation arising under part I of chapter 400
 1680 to a representative of the local or state ombudsman program

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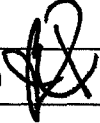
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1681 | ~~council member~~ conducting such an investigation. Any such
1682 | ombudsman shall have a duty to maintain the confidentiality of
1683 | such information.

1684 | Section 43. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1109 Transitional Living Facilities
SPONSOR(S): Health Innovation Subcommittee; Magar
TIED BILLS: IDEN./SIM. **BILLS:** SB 1724

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	13 Y, 0 N, As CS	Guzzo	Shaw
2) Health Care Appropriations Subcommittee		 Clark	Pridgeon 
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Transitional Living Facilities (TLFs) provide specialized health care services including, but not limited to, rehabilitative services, community re-entry training, aids for independent living, and counseling to individuals who sustain brain or spinal cord injuries. The bill consolidates the oversight, care and services of clients of TLFs under specific licensure requirements of the Agency for Health Care Administration (AHCA).

The bill promotes coordination between various state agencies involved in the regulation of TLFs by requiring AHCA, the Department of Health, the Agency for Persons with Disabilities, and the Department of Children and Families to develop an electronic database to ensure relevant client data is communicated timely and effectively.

Specifically, the bill makes the following changes:

- Adds specific admission and discharge requirements and clarifies what constitutes an "appropriate" and an "inappropriate" client for a TLF;
- Adds care and service plan requirements detailing orders for medical care, client functional capability and goals, and transition plans;
- Requires TLFs to provide specific professional services directed toward improving the client's functional status;
- Enables TLF clients to manage their funds and personal possessions, have visitors, and present grievances as appropriate;
- Provides standards for medication management, use of restraints, infection control, safeguards for clients' funds, and emergency preparedness;
- Adds provisions to protect clients from abuse including, proper staff screening, training, prevention, identification, and investigation;
- Provides AHCA the authority to develop rules for physical plant standards, personnel, and services to clients;
- Creates sanctions for violations and provides authority to place a court-ordered receiver if the licensee fails to take responsibility for the facility and places clients at risk;
- Provides standard licensure criteria, including compliance with local zoning, liability insurance, fire-safety inspection, and sanitation requirements; and
- Revises the Brain and Spinal Cord Injury Advisory Council's rights to entry and inspection of TLFs.

The bill has an insignificant negative fiscal impact related to development of an electronic system to allow communication between AHCA and other state agencies to ensure information sharing related to the regulation of the transitional living facilities and clients. The additional required costs are minimal and can be absorbed within existing AHCA resources.

The bill provides an effective date of July 1, 2013.

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

STORAGE NAME: h1109b.HCAS.DOCX

DATE: 3/26/2013

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Transitional living facilities provide specialized health care services, including, but not limited to, rehabilitative services, community reentry training, aids for independent living, and counseling to spinal-cord-injured persons and head-injured persons.¹ There are currently thirteen transitional living facilities licensed in Florida.² The Agency is the licensing authority and one of the regulatory authorities that oversee transitional living facilities pursuant to chapter 408, part II, chapter 400, part V, F.S., and Rule 59A-17, F.A.C. The current licensure fee is \$4,588.00 with a \$90 per bed fee per biennium.³

AHCA governs the physical plant and fiscal management of these facilities and adopts rules, along with DOH, which monitors services for persons with traumatic brain and spinal cord injuries. Investigations concerning allegations of abuse and neglect of children and vulnerable adults are performed by DCF.

Section 400.805, F.S., mandates requirements for transitional living facilities. Section 400.805(2), F.S., provides the licensure requirements and fees for operation of a transitional living facility as well as level 2 background screening requirements for all TLF personnel. Section 400.805(3)(a) requires AHCA, in consultation with DOH, to adopt rules governing the physical plant and the fiscal management of transitional living facilities.

Compared to other types of facilities regulated by AHCA, the detail and scope of regulations for TLFs is significantly narrower and less restrictive, as it focuses more on solvency than resident care.

Recent investigations conducted by AHCA, in conjunction with DCF and DOH, have resulted in findings of instances where TLFs are providing care to a large number of clients who do not have an appropriate diagnosis of spinal cord injured or head injured.⁴

State agencies involved in the regulation of TLFs strive to maintain a level of coordination sufficient to provide quality care to clients of TLFs. AHCA is responsible for the licensure of TLFs, while DOH monitors services for persons with traumatic brain and spinal cord injuries, and DCF investigates allegations of abuse and neglect of children and vulnerable adults. In working together during the recent investigations, gaps and deficiencies were discovered in the TLF regulatory structure.

The Brain and Spinal Cord Injury Program (BSCIP) is administered through DOH. Services provided by the BSCIP include:

- Case management;
- Acute care, and inpatient and outpatient rehabilitation;
- Transitional living;
- Assistive technology;
- Home and vehicle modifications;

¹ Section 400.805(1)(c), F.S.

² HB 1109 Bill Analysis, Economic Impact Statement, Agency for Health Care Administration, at page 1, March 15, 2013 (on file with the Health Innovation subcommittee).

³ *Id.*; See also sections 400.805(2)(b), and 408.805(2), F.S. (the fees contained in ch. 400, F.S., do not reflect the current fees, pursuant to s. 408.805(2), F.S., fees may be adjusted annually not more than the change in consumer price index based on the 12 months immediately preceding the increase).

⁴ Agency for Health Care Administration, Statement of Deficiencies and Plan of Correction (*August 3, 2012*), available at [http://www.upps.ahca.myflorida.com/dm_web/\(s\(ner1fpywcczpxoyuqpyogfn\)\)/doc_results.aspx?file_number=35930769&provider_type=TRANSITIONAL+LIVING+FACILITY++&client_code=34&provider_name=FLORIDA+INSTITUTE+FOR+NEUROLOGIC+REHAB%2c+INC&lic_id=28343](http://www.upps.ahca.myflorida.com/dm_web/(s(ner1fpywcczpxoyuqpyogfn))/doc_results.aspx?file_number=35930769&provider_type=TRANSITIONAL+LIVING+FACILITY++&client_code=34&provider_name=FLORIDA+INSTITUTE+FOR+NEUROLOGIC+REHAB%2c+INC&lic_id=28343) (last viewed March 17, 2013).

- Nursing home transition facilitation; and
- Long-term support for survivors and families through contractual agreements with community based agencies.

Section 381.76, F.S., provides that an individual must be a legal Florida resident who has sustained a moderate to severe traumatic brain or spinal cord injury meeting the state's definition of such injuries to be eligible for services. The State definition of a "brain injury" is an insult to the skull, brain or its covering, resulting from external trauma, which produces an altered state of consciousness or anatomic, motor, sensory, cognitive or behavioral deficit. The current definition of a TLF does not incorporate the term "brain injured". Instead, it refers to the provision of specialized services to spinal-cord-injured persons and *head-injured persons*. The term "head-injured" may allow for a broad interpretation of the word in determining if an individual is appropriate for placement in a TLF.

The Brain and Spinal Cord Injury Advisory Council has rights to entry and inspection of transitional living facilities granted under section 400.805(4), F.S.

Effect of Proposed Changes

The bill consolidates the oversight of care and services of clients of TLFs under specific licensure requirements of AHCA and promotes coordination between AHCA, DOH, APD, DCF, and the Brain and Spinal Cord Injury Program.

This bill repeals the current TLF regulations in s. 400.805, F.S. and creates Part XI of chapter 400, to include ss. 400.9970-400.9984, F.S.

This bill creates s. 400.9970, F.S., and states the intent of the legislation is to provide for the development, establishment and enforcement of basic standards for TLFs to ensure quality of care and services to residents.

Section 400.9971 is created to define terms relating to TLFs, and adds new terminology to include chemical and physical restraints and their use. The bill adds "behavior modification" services to the list of specialized health care services contained in the definition of a TLF.

Section 400.9972, F.S., is created to provide licensure requirements for TLFs, including compliance with local zoning, liability insurance, fire-safety inspection, and sanitation requirements. This section also provides the application fees for TLFs and adds language to clarify that the fees must be adjusted to conform with the annual cost of living adjustment, pursuant to s. 408.805(2), F.S.

Admission, Transfer and Discharge Requirements

The bill creates s. 400.9973, F.S., to establish requirements that TLFs must have in place for client admission, transfer and discharge from the facility. The facility is required to have admission, transfer and discharge policies and procedures in writing. The client's admission to the facility must be in line with facility policies and procedures.

Each resident admitted to the facility is required to be admitted upon prescription by a licensed physician and must remain under the care of the physician for the duration of the client's stay in the facility. Clients admitted to the facility must have a brain and spinal cord injury, such as a lesion to the spinal cord or cauda equine syndrome, with evidence of significant involvement of two of the following deficits or dysfunctions:

- Motor deficit.
- Sensory deficit.
- Bowel and bladder dysfunction.

- An injury to the skull, brain, or its covering that produces an altered state of consciousness or anatomic motor, sensory, cognitive, or behavioral deficits.

This description of what constitutes a brain or spinal cord injury, as it relates to admission requirements of TLFs, differs from the definition of a brain or spinal cord injury for purposes of the BSCIP⁵, in that it does not require the injury to be the result of external trauma.

In cases where a client's medical diagnosis does not positively identify a cause of the client's condition, or whose symptoms are inconsistent with the known cause of injury, or whose recovery is inconsistent with the known medical condition, the bill allows for an individual to be admitted for an evaluation period not to exceed ninety-days.

The bill provides that a person may not be admitted to a TLF if the person:

- Presents a significant risk of infection to other clients or personnel;
 - In addition the bill requires a health care practitioner to provide documentation that the person is free of apparent signs and symptoms of communicable disease.
- Is a danger to self or others as determined by a physician, or mental health practitioner, unless the facility provides adequate staffing and support to ensure patient safety;
- Is bedridden; or
- Requires 24-hour nursing supervision.

Upon a client meeting the admission criteria, the medical or nursing director must complete an initial evaluation of the client's functional skills, behavioral status, cognitive status, educational/vocational potential, medical status, psychosocial status, sensorimotor capacity, and other related skills and abilities within the first seventy-two hours of admission. Further, the bill requires the facility to implement an initial comprehensive treatment plan that delineates services to be provided within the first four days of admission.

The bill requires TLFs to develop a discharge plan for each client prior to or upon admission to the facility. The discharge plan is required to identify intended discharge sites and possible alternate discharge sites. For each discharge site identified, the discharge plan must identify the skills, behaviors, and other conditions that the client must achieve to be appropriate for discharge. The bill requires discharge plans to be reviewed and updated not less than once per month.

The bill allows for the discharge of clients, as soon as practicable, if the TLF is no longer the most appropriate, least restrictive treatment option, and for clients who:

- No longer require any of the specialized services described in s. 400.9971(7), F.S.; or
- Are not making measurable progress in accordance with their comprehensive treatment plan.

The bill requires TLFs to provide at least a thirty-days' notice to clients of transfer or discharge plans, which must include an acceptable transfer location if the client is unable to live independently, unless the client voluntarily terminates residency.

The bill limits the amount of time a client may reside in a TLF to no more than two years, unless a referral is made to Disability Rights of Florida at least 21 months after admission and the client requests continued treatment in the facility.

⁵ Section 381.745(2), F.S., Brain or spinal cord injury means a lesion to the spinal cord or cauda equine, resulting from external trauma, with evidence of significant involvement of two of the following deficits or dysfunctions: Motor deficit; Sensory deficit; Bowel and bladder dysfunction; or an insult to the skull, brain, or its covering, resulting from external trauma that produces an altered state of consciousness or anatomic motor, sensory, cognitive, or behavioral deficits.

Client Treatment Plans and Client Services

The bill creates s. 400.9974, F.S., to require each client in the facility to have a comprehensive treatment plan which is developed by an interdisciplinary team, consisting of the case manager, program director, nurse, appropriate therapists, and the client and/or the client's representative. The comprehensive treatment plan must be completed no later than 30 days after development of the initial comprehensive treatment plan. Treatment plans must be reviewed and updated at least once a month. If a significant change in the client's condition occurs, reevaluation must occur. The facility must have qualified staff to carry out and monitor interventions in accordance with the stated goals of the individual's program plan.

Each comprehensive treatment plan must include the following:

- Physician's orders, diagnosis, medical history, physical exams and rehab needs;
- A preliminary nursing evaluation with physician orders for immediate care to be completed upon admission;
- A standardized assessment of the client's functional capability; and
- A plan to achieve transition to the community and the estimated length of time to achieve transition goals.

The bill requires licensees to employ available qualified professional staff to carry out the various professional interventions in accordance with the goals and objectives of the individual program plan. Each client must receive a continuous treatment program that includes appropriate, consistent implementation of a program of specialized and general training, treatment, and services.

Provider Responsibilities

The bill creates s. 400.9975, F.S., to require TLF licensees to ensure that every client:

- Lives in a safe environment;
- Is treated with respect, recognition of personal dignity and privacy;
- Retains use of their own clothes and personal property;
- Has unrestricted private communications which includes mail, telephone and visitors,
- Participates in community services and activities;
- Manages their financial affairs unless the client or the client's representative authorizes the administrator of the facility to provide safekeeping for funds;
- Has reasonable opportunity for regular exercise and be outdoors several times a week.
- Exercises civil and religious liberties;
- Has adequate access and appropriate health care services;
- Has the ability to present grievances and recommend changes in policies, procedures and services;
- Is enabled to have a representative participate in the process of treatment for the client;
- Receives prompt responses from the facility to communications from family and friends;
- Have visits by individuals with a relationship to the client and any reasonable hour; and
- Has the opportunity to leave the facility to visit, take trips or vacations.

Additionally, the client's representative must be promptly notified of any significant incidents or changes in the client's condition.

The administrator is required to ensure a written notice of provider responsibilities is posted in a prominent place in the facility which includes the statewide toll-free telephone number for reporting complaints to the AHCA and the statewide toll-free number of Disability Rights of Florida. The facility must ensure the client has access to a telephone to call the AHCA, central abuse hotline, Disabilities

Rights of Florida and the local advocacy council. The facility cannot take retaliatory action against any person for filing a complaint or grievance, or for appearing as a witness in any hearing.

Medication Practices

The bill creates s. 400.9976, F.S., to require TLFs to maintain a medication administration record for each client, and for each dose, including medications that are self-administered. Each patient who is self-administering must be given a pill organizer, and a nurse must place the medications inside the pill organizer and document the date and time the pill organizer is filled. All medications, including those that are self-administered, must be administered as ordered by the physician. Drug administration errors and adverse drug reactions must be recorded and reported immediately to the physician. The interdisciplinary team determines if a client is capable of self-administration of medications.

Client Protection

The bill creates s. 400.9977, F.S., to establish provisions relating to the protection of clients from abuse, neglect, and exploitation. The bill provides that the facility is responsible for developing and implementing policies and procedures for screening and training employees, protection of clients and for the prevention, identification, investigation, and reporting of abuse, neglect, mistreatment, and exploitation. The facility is also required to identify clients whose history renders them at risk for abusing other clients. Further, the bill requires facilities to implement procedures to:

- Screen potential employees for a history of abuse, neglect or mistreatment of client;
- Train employees through orientation and on-going sessions on abuse prohibition practices;
- Implement procedures to provide clients, families and staff information on how and to whom they may report concerns, incidents and grievances without the fear of retribution;
- Implement procedures to identify events such as suspicious bruising of clients that may constitute abuse to determine the direction of the investigation;
- Investigate different types of incidents and identify staff members responsible for the initial reporting and reporting of results to the proper authorities;
- Protect clients from harm during an investigation; and
- Report all alleged violations and all substantiated incidents as required under chapters 39 and 415, F.S., and to the appropriate licensing authorities.

The facility must identify, correct, and intervene in situations in which abuse, neglect, mistreatment or exploitation is likely to occur, including, the physical environment that makes abuse and/or neglect more likely to occur, such as secluded areas.

The facility is required to have a sufficient number of staff to meet the needs of the clients, and must assure that staff has knowledge of the individual client's care needs. The facility must analyze the occurrences of abuse, exploitation, mistreatment or neglect and determine what changes are needed to policies and procedures to prevent further occurrences.

Restraints and Seclusion

The bill creates s. 400.9978, F.S., to require physical and chemical restraints to be, ordered and documented, by the client's physician, with the consent of the client or client's representative. The bill provides that the use of chemical restraints is limited to the prescribed dosage of medications by the client's physician.

The bill authorizes a physician to issue an emergency treatment order to immediately administer rapid response psychotropic medications or other chemical restraints when a client exhibits symptoms that present an immediate risk of injury or death to themselves or others. Each emergency treatment order must be documented and maintained in the client's record and is only effective for 24-hours.

Clients receiving medications that can serve as a restraint must be evaluated by their physician at least monthly to assess the:

- Continued need for the medication;
- Level of the medication in client's blood; and
- Need for adjustments in the prescription.

The facility is required to ensure that clients are free from unnecessary drugs and physical restraints. All interventions to manage inappropriate client behaviors must be administered with sufficient safeguards and supervision.

Background Screening and Administration/Management

The bill creates s. 400.9979, F.S., to require all facility personnel to complete a level 2 background screening as required in s. 408.809(1)(e), F.S. pursuant to Chapter 435. The facility must maintain personnel records which contain the staff's background screening, job description, documentation of compliance with training requirements, and a copy of all licenses or certifications held by staff who perform services for which licensure or certification is required. The record must also include a copy of all job performance evaluations.

The bill requires the facility to:

- Implement infection control policies and procedures.
- Maintain liability insurance as defined by section 624.605, F.S., at all times.
- Designate one person as administrator who is responsible for the overall management of the facility.
- Designate in writing a person responsible for the facility when the administrator is absent for 24 hours.
- Designate in writing a program director who is responsible for supervising the therapeutic and behavioral staff, determining the levels of supervision, and room placement for each client.
- Designate in writing a person to be responsible when the program director is absent from the facility for more than 24 hours.
- Obtain approval of the comprehensive emergency management plan from their local emergency management agency.
- Maintain written records in a form and system in accordance with medical and business practices and be available for submission to AHCA upon request. The records must include:
 - A daily census record;
 - A report of all accident or unusual incidents involving clients or staff members that caused or had the potential to cause injury or harm to any person or property within the facility;
 - Agreements with third party providers; and
 - Agreements with consultants employed by the facility and documentation of each consultant's visits and required written, dated reports.

Property and Personal Affairs of Clients

The bill creates s. 400.9980, F.S., to require facilities to give clients options of using their own personal belongings, and to choose their own roommate whenever possible. The bill provides that the admission of a client to a facility, and their presence therein, shall not confer on a licensee, administrator, employee, or representative any authority to manage, use, or dispose of any property of the client. The licensee, administrator employee or representative may not act as the client's guardian, trustee, payee for social security or other benefits. The licensee, administrator, employee or representative may act as the power of attorney for a client if the licensee has filed a surety bond with AHCA in an amount equal to twice the average monthly income of the client. When the power of

attorney is granted to the licensee, administrator, staff, or representative, they must notify the client on a monthly basis of any transactions made on their behalf and a copy of such statement given to the client must be retained in the client's file and be available for inspection.

The bill requires the facility to, upon consent from the client, provide for the safekeeping of personal effects. The personal effects may not be in excess of \$1,000 and funds of the client may not be in excess of \$500 in cash, and the facility must keep complete and accurate records of all funds and personal effects received.

The bill provides that for any funds or other property belonging to or due to a client, such funds shall be trust funds which shall be kept separate from the funds and property of the licensee or shall be specifically credited to the client. At least once every month, unless upon order of a court of competent jurisdiction, the facility must furnish the client and the client's representative a complete and verified statement of all funds and other property, detailing the amount and items received, together with their sources and disposition.

The bill provides that any licensee, administrator, or staff, or representative thereof, who is granted power of attorney for any client of the facility and who misuses or misappropriates funds obtained through this power commits a felony of the third degree.

In the event of the death of a client, the facility must return all refunds, funds, and property held in trust to the client's personal representative. If the client has no spouse or adult next of kin or such person cannot be located, funds due the client must be placed in an interest-bearing account, and all property held in trust by the licensee shall be safeguarded until such time as the funds and property are disbursed pursuant to the Florida Probate Code.

The bill authorizes AHCA to adopt rules to clarify terms and specify procedures and documentation necessary to administer the provisions relating to the proper management of clients' funds and personal property and the execution of surety bonds.

Rules Establishing Standards

The bill creates s. 400.9981, F.S., to authorize AHCA to publish and enforce rules, which include criteria to ensure reasonable and consistent quality of care and client safety. Further, the bill authorizes AHCA in consultation with DOH, to adopt and enforce rules which must include reasonable and fair criteria in relation to the:

- Location of TLFs;
- Qualifications of all personnel having responsibility for any part of the client's care and services;
- Requirements for personnel procedures, insurance coverage, and reporting procedures;
- Services provided to clients; and the
- Preparation and annual update of a comprehensive emergency management plan.

Penalties and Violations

The bill creates s. 400.9982, F.S., to authorize AHCA to adopt rules to enforce penalties, and require AHCA to classify each violation according to the nature of the violation and the gravity of its probable effect on the client. The classification of violations, as defined in s. 408.813, F.S., must be included on the written notice of the violation in the following categories:

- Class "I" violations will result in issuance of a citation regardless of correction and impose an administrative fine up to \$10,000 for a widespread violation.
- Class "II" violations will result in an administrative fine up to \$5,000 for a widespread violation.
- Class "III" violations will result in an administrative fine up to \$1,000 for an uncorrected deficiency of a widespread violation.

- Class "IV" violations will result in an administrative fine not less than \$100 and not exceeding \$200 for an uncorrected deficiency.

Receivership Proceedings

The bill creates s. 400.9983, F.S., to authorize AHCA access the provisions of s. 429.22, F.S., regarding receivership proceedings for TLFs. As a result, AHCA is authorized to petition a court for the appointment of a receiver when any of the following conditions exist:

- The facility is closing or has informed the Agency that it intends to close;
- The Agency determines the conditions exist in the facility that presents danger to the health, safety or welfare of the clients of the facility; or
- The facility cannot meet its financial obligation for providing food, shelter, care and utilities.

Petitions for receivership take priority over other court business. A hearing must be conducted within five days of the petition filing. AHCA must notify the owner or administrator of the facility named in the petition and the date of the hearing. The court may grant the petition only upon a finding that the health, safety or welfare of the client is threatened if a condition existing at the time the petition was filed is allowed to continue.

A receiver may be appointed from a list of qualified persons developed by AHCA. The receiver must make provisions for the continued health, safety and welfare of all clients and perform all duties set out by the court. The receiver must operate the facility to assure the safety and adequate health care for the clients. The receiver may use all resources and consumable goods in the provision of care services to the client and correct or eliminate any deficiency in the structure or furnishings of the facility which endangers the safety of clients and staff. The receiver may hire or contract staff to carry out the duties of the receiver. The receiver must also honor all leases and mortgages, and has the power to direct and manage, and to discharge employees of the facility.

Interagency Communication

The bill creates s. 400.9984, F.S., to require AHCA, DOH, APD, and DCF to develop electronic systems to ensure relevant data pertaining to the regulation of TLFs is communicated timely among the agencies for the protection of clients. The bill requires the system to include a brain and spinal cord injury registry and a client abuse registry.

B. SECTION DIRECTORY:

Section 1: Designates ss. 400.9970 through 400.9984, F.S., as part XI of chapter 400, to be entitled "Transitional Living Facilities.

Section 2: Creates s. 400.9970, F.S., providing legislative intent.

Section 3: Creates s. 400.9971, F.S., providing definitions relating to transitional living facilities.

Section 4: Creates s. 400.9972, F.S., relating to required licensure; fees; and applications.

Section 5: Creates s. 400.9973, F.S., relating to client admission, transfer, and discharge.

Section 6: Creates s. 400.9974, F.S., relating to client treatment plans; and client services.

Section 7: Creates s. 400.9975, F.S., relating to licensee responsibilities.

Section 8: Creates s. 400.9976, F.S., relating to medication practices.

Section 9: Creates s. 400.9977, F.S., relating to protection from abuse, neglect, mistreatment, and exploitation.

Section 10: Creates s. 400.9978, F.S., relating to restraints and seclusion; and client safety.

Section 11: Creates s. 400.9979, F.S., relating to background screening; administration and management.

Section 12: Creates s. 400.9980, F.S., relating to property and personal affairs of clients.

Section 13: Creates s. 400.9981, F.S., relating to rules establishing standards.

- Section 14:** Creates s. 400.9982, F.S., relating to violations and penalties.
- Section 15:** Creates s. 400.9983, F.S., relating to receivership proceedings.
- Section 16:** Creates s. 400.9984, F.S., relating to interagency communication.
- Section 17:** Repeals s. 400.805, F.S., relating to transitional living facilities.
- Section 18:** Amends s. 381.78, F.S., relating to the advisory council on brain and spinal cord injuries.
- Section 19:** Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The development of an electronic system will have a minimal fiscal impact and any costs associated with implementation of this legislation can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires the development of an electronic system to allow communication between AHCA and other state agencies to ensure information sharing related to the regulation of the transitional living facilities and clients. Minimal resources are needed for the data sharing and can be absorbed within existing budget.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2013, the Health Innovation Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Provides flexibility in the length of time a client may stay in a TLF to include up to a 90 day evaluation period and limits the amount of time they can stay to 2 years.
- Prohibits TLFs from admitting clients whose primary diagnosis is mental illness.
- Requires an initial evaluation to be completed within 72 hours of a client's admission.
- Requires TLFs to develop a discharge plan for each client, which must be updated monthly.
- Requires TLFs to provide at least 30 days' notice to clients before discharge or transfer.
- Requires TLFs to develop comprehensive treatment plans for all clients, which must be reviewed and updated monthly.
- Requires clients who self-administer medication to be provided a pill organizer to be filled by a nurse.
- Authorizing a physician to issue an emergency treatment order to immediately administer rapid response psychotropic medications or other chemical restraints when a patient exhibits symptoms that present an immediate risk of injury or death to self or others.
- Requires licensees to designate in writing a program director whom is responsible for supervising the therapeutic and behavioral staff, determining levels of supervision, and room placement for each client.
- Referencing existing statutory authority for the provision of emergency placement of a receiver.

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

1 A bill to be entitled
 2 An act relating to transitional living facilities;
 3 creating part XI of ch. 400, F.S., entitled
 4 "Transitional Living Facilities"; creating s.
 5 400.9970, F.S.; providing legislative intent; creating
 6 s. 400.9971, F.S.; providing definitions; creating s.
 7 400.9972, F.S.; requiring the licensure of
 8 transitional living facilities; providing fees;
 9 providing license application requirements; creating
 10 s. 400.9973, F.S.; providing requirements for
 11 transitional living facilities relating to client
 12 admission, transfer, discharge, and length of
 13 residency; creating s. 400.9974, F.S.; requiring a
 14 comprehensive treatment plan to be developed for each
 15 client; providing plan requirements; creating s.
 16 400.9975, F.S.; providing licensee responsibilities;
 17 providing notice requirements; prohibiting a licensee
 18 or employee of a facility from serving notice upon a
 19 client to leave the premises or take other retaliatory
 20 action; requiring the client and client's
 21 representative to be provided with certain
 22 information; requiring the licensee to develop and
 23 implement certain policies and procedures; creating s.
 24 400.9976, F.S.; providing licensee requirements
 25 relating to medication practices; creating s.
 26 400.9977, F.S.; providing requirements for the
 27 screening of potential employees and monitoring of
 28 employees for the protection of clients; requiring

29 | licensees to implement certain procedures; creating s.
 30 | 400.9978, F.S.; providing requirements for the use of
 31 | physical restraints and chemical restraint medication
 32 | on clients; creating s. 400.9979, F.S.; providing
 33 | background screening requirements; requiring the
 34 | licensee to maintain certain personnel records;
 35 | providing administrative responsibilities for
 36 | licensees; providing recordkeeping requirements;
 37 | creating s. 400.9980, F.S.; providing requirements
 38 | relating to property and personal affairs of clients;
 39 | providing requirements for a licensee with respect to
 40 | obtaining surety bonds; providing recordkeeping
 41 | requirements relating to the safekeeping of personal
 42 | effects; providing requirements for trust funds
 43 | received by licensee and credited to the client;
 44 | providing a penalty for certain misuse of a resident's
 45 | personal needs allowance; providing criminal penalties
 46 | for violations; providing for the disposition of
 47 | property in the event of the death of a client;
 48 | authorizing the Agency for Health Care Administration
 49 | to adopt rules; creating s. 400.9981, F.S.; requiring
 50 | the agency, in consultation with the Department of
 51 | Health, to adopt and enforce certain rules; creating
 52 | s. 400.9982, F.S.; providing procedures relating to
 53 | violations and penalties; providing administrative
 54 | fines for specified classes of violations; creating s.
 55 | 400.9983, F.S.; authorizing the agency to apply
 56 | certain provisions with regard to receivership

57 proceedings; creating s. 400.9984, F.S.; requiring the
 58 Agency for Health Care Administration, the Department
 59 of Health, the Agency for Persons with Disabilities,
 60 and the Department of Children and Families to develop
 61 electronic systems for certain purposes; repealing s.
 62 400.805, F.S., relating to transitional living
 63 facilities; amending s. 381.78, F.S.; conforming
 64 provisions to changes made by the act; providing an
 65 effective date.

66

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

68

69 Section 1. Sections 400.9970 through 400.9984, Florida
 70 Statutes, are designated as part XI of chapter 400, Florida
 71 Statutes, entitled "Transitional Living Facilities."

72 Section 2. Section 400.9970, Florida Statutes, is created
 73 to read:

74 400.9970 Legislative intent.—It is the intent of the
 75 Legislature to provide for the licensure of transitional living
 76 facilities and require the development, establishment, and
 77 enforcement of basic standards by the agency to ensure quality
 78 of care and services to clients in transitional living
 79 facilities. It is the policy of the state that the least
 80 restrictive appropriate available treatment be used based on the
 81 individual needs and best interests of the client and consistent
 82 with optimum improvement of the client's condition. The goal of
 83 a transitional living program for individuals who have brain or
 84 spinal cord injuries is to assist each individual who has such

85 an injury to achieve a higher level of independent functioning
 86 and to enable that individual to reenter the community.

87 Section 3. Section 400.9971, Florida Statutes, is created
 88 to read:

89 400.9971 Definitions.—As used in this part, the term:

90 (1) "Agency" means the Agency for Health Care
 91 Administration.

92 (2) "Chemical restraint" means a pharmacologic drug that
 93 physically limits, restricts, or deprives an individual of
 94 movement or mobility, is used for client protection or safety,
 95 and is not required for the treatment of medical conditions or
 96 symptoms.

97 (3) "Client's representative" means the parent of a child
 98 client, or the client's guardian, designated representative or
 99 designee, surrogate, or attorney in fact.

100 (4) "Department" means the Department of Health.

101 (5) "Licensee" means an individual issued a license by the
 102 agency.

103 (6) "Physical restraint" means any manual method to
 104 restrict freedom of movement of or normal access to an
 105 individual's body, or a physical or mechanical device, material,
 106 or equipment attached or adjacent to the individual's body so
 107 that he or she cannot easily remove the restraint and that
 108 restricts freedom of movement of or normal access to one's body,
 109 including, but not limited to, a half-bed rail, a full-bed rail,
 110 a geriatric chair, and a posey restraint. The term includes any
 111 device that was not specifically manufactured as a restraint but
 112 that has been altered, arranged, or otherwise used for this

113 purpose. The term does not include bandage material used for the
 114 purpose of binding a wound or injury.

115 (7) "Transitional living facility" means a site where
 116 specialized health care services are provided, including, but
 117 not limited to, rehabilitative services, behavior modification,
 118 community reentry training, aids for independent living, and
 119 counseling to brain-injured persons and spinal-cord-injured
 120 persons. The term does not include a hospital licensed under
 121 chapter 395 or any federally operated hospital or facility.

122 Section 4. Section 400.9972, Florida Statutes, is created
 123 to read:

124 400.9972 License required; fee; application.-

125 (1) The requirements of part II of chapter 408 apply to
 126 the provision of services that require licensure pursuant to
 127 this part and part II of chapter 408 and to entities licensed by
 128 or applying for such licensure from the agency pursuant to this
 129 part. A license issued by the agency is required for the
 130 operation of a transitional living facility in this state.

131 (2) In accordance with this part, an applicant or a
 132 licensee shall pay a fee for each license application submitted
 133 under this part. The license fee shall consist of a \$4,588
 134 license fee and a \$90 per-bed fee per biennium and shall conform
 135 to the annual adjustment authorized in s. 408.805.

136 (3) Each applicant for licensure must provide:

137 (a) The location of the facility for which a license is
 138 sought and documentation, signed by the appropriate local
 139 government official, that states that the applicant has met
 140 local zoning requirements.

141 (b) Proof of liability insurance as defined in s. 624.605.

142 (c) Proof of compliance with local zoning requirements,
 143 including compliance with the requirements of chapter 419 if the
 144 proposed facility is a community residential home.

145 (d) Proof that the facility has received a satisfactory
 146 firesafety inspection.

147 (e) Documentation of a satisfactory sanitation inspection
 148 of the facility by the county health department.

149 Section 5. Section 400.9973, Florida Statutes, is created
 150 to read:

151 400.9973 Client admission, transfer, and discharge.-

152 (1) Each transitional living facility must have written
 153 policies and procedures governing the admission, transfer, and
 154 discharge of clients.

155 (2) The admission of each client to a transitional living
 156 facility must be in accordance with the licensee's policies and
 157 procedures.

158 (3) A client admitted to a transitional living facility
 159 must have a brain or spinal cord injury, such as a lesion to the
 160 spinal cord or cauda equina syndrome, with evidence of
 161 significant involvement of two of the following deficits or
 162 dysfunctions:

163 (a) A motor deficit.

164 (b) A sensory deficit.

165 (c) Bowel and bladder dysfunction.

166 (d) An injury to the skull, the brain, or the brain's
 167 covering that produces an altered state of consciousness or an
 168 anatomic motor, sensory, cognitive, or behavioral deficit.

169 (4) A client whose medical diagnosis does not positively
 170 identify a cause of the client's condition, whose symptoms are
 171 inconsistent with the known cause of injury, or whose recovery
 172 is inconsistent with the known medical condition may be admitted
 173 to a transitional living facility for evaluation for a period
 174 not to exceed 90 days.

175 (5) A client admitted to a transitional living facility
 176 must be admitted upon prescription by a licensed physician and
 177 must remain under the care of a licensed physician for the
 178 duration of the client's stay in the facility.

179 (6) A transitional living facility may not admit a client
 180 whose primary admitting diagnosis is mental illness.

181 (7) An individual may not be admitted to a transitional
 182 living facility if the individual:

183 (a) Presents significant risk of infection to other
 184 clients or personnel. A health care practitioner must provide
 185 documentation that the individual is free of apparent signs and
 186 symptoms of communicable disease;

187 (b) Is a danger to self or others as determined by a
 188 physician or mental health practitioner licensed under chapter
 189 490 or chapter 491, unless the facility provides adequate
 190 staffing and support to ensure patient safety;

191 (c) Is bedridden; or

192 (d) Requires 24-hour nursing supervision.

193 (8) If the client meets the admission criteria, the
 194 medical or nursing director of the facility must complete an
 195 initial evaluation of the client's functional skills, behavioral
 196 status, cognitive status, educational or vocational potential,

197 medical status, psychosocial status, sensorimotor capacity, and
 198 other related skills and abilities within the first 72 hours
 199 after the client's admission to the facility. An initial
 200 comprehensive treatment plan that delineates services to be
 201 provided and appropriate sources for such services must be
 202 implemented within the first 4 days after admission.

203 (9) Each transitional living facility shall develop a
 204 discharge plan for each client before or upon admission to the
 205 facility. The discharge plan must identify the intended
 206 discharge site and possible alternative discharge sites. For
 207 each discharge site identified, the discharge plan must identify
 208 the skills, behaviors, and other conditions that the client must
 209 achieve to be appropriate for discharge. Discharge plans must be
 210 reviewed and updated as necessary, but no less often than once
 211 monthly.

212 (10) As soon as practicable, a transitional living
 213 facility shall discharge a client when he or she no longer
 214 requires any of the specialized services described in s.
 215 400.9971(7) or is not making measurable progress in accordance
 216 with his or her comprehensive treatment plan, or if the
 217 transitional living facility is no longer the most appropriate,
 218 least restrictive treatment option.

219 (11) Each transitional living facility shall provide at
 220 least 30 days' notice to clients of transfer or discharge plans,
 221 including the location of an acceptable transfer location if the
 222 client is unable to live independently. This requirement does
 223 not apply if a client voluntarily terminates residency.

224 (12) A client may not reside in a transitional living

225 facility for more than 2 years unless a referral is made to
 226 Disability Rights Florida at least 21 months after admission and
 227 the client or, if appropriate, the client's representative
 228 requests that the client continue to receive treatment at the
 229 transitional living facility.

230 Section 6. Section 400.9974, Florida Statutes, is created
 231 to read:

232 400.9974 Client treatment plans; client services.-

233 (1) Each transitional living facility shall develop a
 234 comprehensive treatment plan for each client as soon as
 235 possible, but no later than 30 days following development of the
 236 initial comprehensive treatment plan. Comprehensive treatment
 237 plans must be reviewed and updated if the client fails to meet
 238 projected improvements in the plan or if a significant change in
 239 the client's condition occurs. Treatment plans must be reviewed
 240 and updated no less often than once monthly. Comprehensive
 241 treatment plans must be developed by an interdisciplinary team
 242 consisting of the case manager, the program director, the nurse,
 243 and appropriate therapists. The client or, if appropriate, the
 244 client's representative must be included in developing the
 245 comprehensive treatment plan.

246 (2) The comprehensive treatment plan must include:

247 (a) The physician's orders and the client's diagnosis,
 248 medical history, physical examination, and rehabilitative or
 249 restorative needs.

250 (b) A preliminary nursing evaluation with physician's
 251 orders for immediate care, completed on admission.

252 (c) A comprehensive, accurate, reproducible, and

253 standardized assessment of the client's functional capability;
 254 the treatments designed to achieve skills, behaviors, and other
 255 conditions necessary to return to the community; and specific
 256 measurable goals.

257 (d) Steps necessary for the client to achieve transition
 258 to the community and estimated length of time to achieve the
 259 goals.

260 (3) The client or, if appropriate, the client's
 261 representative shall consent to the continued treatment at the
 262 transitional living facility. If such consent is not given, the
 263 transitional living facility shall discharge the client as soon
 264 as practicable.

265 (4) Each client must receive the professional program
 266 services needed to implement the client's comprehensive
 267 treatment plan.

268 (5) The licensee must employ available qualified
 269 professional staff to carry out and monitor the various
 270 professional interventions in accordance with the stated goals
 271 and objectives of every comprehensive treatment plan.

272 (6) Each client must receive a continuous treatment
 273 program that includes appropriate, consistent implementation of
 274 a program of specialized and general training, treatment, health
 275 services, and related services that is directed toward:

276 (a) The acquisition of the behaviors necessary for the
 277 client to function with as much self-determination and
 278 independence as possible;

279 (b) The prevention or deceleration of regression or loss
 280 of current optimal functional status; and

281 (c) The addressing of behavioral issues that preclude
 282 independent functioning in the community.

283 Section 7. Section 400.9975, Florida Statutes, is created
 284 to read:

285 400.9975 Licensee responsibilities.—

286 (1) The licensee shall ensure that each client:

287 (a) Lives in a safe environment free from abuse, neglect,
 288 and exploitation.

289 (b) Is treated with consideration and respect and with due
 290 recognition of personal dignity, individuality, and the need for
 291 privacy.

292 (c) Retains and uses his or her own clothes and other
 293 personal property in his or her immediate living quarters, so as
 294 to maintain individuality and personal dignity, except when the
 295 licensee can demonstrate that such retention and use would be
 296 unsafe, impractical, or an infringement upon the rights of other
 297 clients.

298 (d) Has unrestricted private communication, including
 299 receiving and sending unopened correspondence, access to a
 300 telephone, and visiting with any person of his or her choice.
 301 Upon request, the licensee shall make provisions to modify
 302 visiting hours for caregivers and guests. The facility shall
 303 restrict communication in accordance with any court order or
 304 written instruction of a client's representative. Any
 305 restriction on a client's communication for therapeutic reasons
 306 shall be reviewed no less often than weekly and shall be removed
 307 as soon as it is no longer clinically indicated. The basis for
 308 the restriction shall be explained to the client and, if

309 applicable, the client's representative. The client shall
 310 nonetheless retain the right to call the abuse hotline, the
 311 agency, and Disability Rights Florida at any and all times.

312 (e) Participates in and benefits from community services
 313 and activities to achieve the highest possible level of
 314 independence, autonomy, and interaction within the community.

315 (f) Manages his or her financial affairs unless the client
 316 or, if applicable, the client's representative authorizes the
 317 administrator of the facility to provide safekeeping for funds
 318 as provided in this part.

319 (g) Has reasonable opportunity for regular exercise
 320 several times a week and to be outdoors at regular and frequent
 321 intervals except when prevented by inclement weather.

322 (h) Exercises civil and religious liberties, including the
 323 right to independent personal decisions. No religious belief or
 324 practice, including attendance at religious services, shall be
 325 imposed upon any client.

326 (i) Has access to adequate and appropriate health care
 327 consistent with established and recognized standards within the
 328 community.

329 (j) Has the ability to present grievances and recommend
 330 changes in policies, procedures, and services to the staff of
 331 the licensee, governing officials, or any other person without
 332 restraint, interference, coercion, discrimination, or reprisal.
 333 Each licensee shall establish a grievance procedure to
 334 facilitate a client's exercise of this right. This right
 335 includes access to Disability Rights Florida and other advocates
 336 and the right to be a member of, be active in, and associate

337 with advocacy or special interest groups.

338 (2) The licensee shall:

339 (a) Promote participation of each client's representative
 340 in the process of providing treatment to the client unless the
 341 representative's participation is unobtainable or inappropriate.

342 (b) Answer communications from each client's family,
 343 representatives, and friends promptly and appropriately.

344 (c) Promote visits by individuals with a relationship to
 345 the client at any reasonable hour, without requiring prior
 346 notice, or in any area of the facility that provides direct
 347 client care services to the client, consistent with the client's
 348 and other clients' privacy, unless the interdisciplinary team
 349 determines that such a visit would not be appropriate.

350 (d) Promote leave from the facility for visits, trips, or
 351 vacations.

352 (e) Promptly notify the client's representative of any
 353 significant incidents or changes in the client's condition,
 354 including, but not limited to, serious illness, accident, abuse,
 355 unauthorized absence, or death.

356 (3) The administrator of a facility shall ensure that a
 357 written notice of licensee responsibilities is posted in a
 358 prominent place in each building where clients reside and read
 359 or explained to clients who cannot read. This notice shall
 360 include the statewide toll-free telephone number for reporting
 361 complaints to the agency, must be provided to clients in a
 362 manner that is clearly legible, and must include the words: "To
 363 report a complaint regarding the services you receive, please
 364 call toll-free ...[telephone number]... or Disability Rights

365 Florida ...[telephone number]..."; and the statewide toll-free
 366 telephone number for the central abuse hotline must be provided
 367 to clients in a manner that is clearly legible and must include
 368 the words: "To report abuse, neglect or exploitation, please
 369 call toll-free ...[telephone number where complaints may be
 370 lodged]...." The licensee must ensure a client's access to a
 371 telephone to call the agency, central abuse hotline, Disability
 372 Rights Florida, and the Florida local advocacy council.

373 (4) A licensee or employee of a facility may not serve
 374 notice upon a client to leave the premises or take any other
 375 retaliatory action against any person solely due to the
 376 following:

377 (a) The client or other person files an internal or
 378 external complaint or grievance regarding the facility.

379 (b) The client or other person appears as a witness in any
 380 hearing inside or outside the facility.

381 (5) Before or at the time of admission, the client and the
 382 client's representative shall be provided with a copy of the
 383 client's contract and a copy of the licensee's responsibilities
 384 as provided in subsections (1) and (2).

385 (6) The licensee must develop and implement policies and
 386 procedures governing the release of any client information,
 387 including consent necessary from the client or the client's
 388 representative.

389 Section 8. Section 400.9976, Florida Statutes, is created
 390 to read:

391 400.9976 Medication practices.—

392 (1) An individual medication administration record must be

393 maintained for each client. Each dose of medication, including a
 394 self-administered dose, shall be properly recorded in the
 395 client's record. Each client who self-administers medication
 396 shall be given a pill organizer. Medication must be placed in
 397 the pill organizer by a nurse. A nurse shall document the date
 398 and time medication is placed into each client's pill organizer.
 399 All medications must be administered in compliance with the
 400 physician's orders.

401 (2) If the interdisciplinary team determines that self-
 402 administration of medications is an appropriate objective, and
 403 if the physician does not specify otherwise, a client must be
 404 taught to self-administer his or her medication without a staff
 405 person. This includes all forms of administration, including
 406 orally, via injection, and via suppository. The client's
 407 physician must be informed of the interdisciplinary team's
 408 decision that self-administration of medications is an objective
 409 for the client. A client may not self-administer medication
 410 until he or she demonstrates the competency to take the correct
 411 medication in the correct dosage at the correct time, to respond
 412 to missed doses, and to contact an appropriate person with
 413 questions.

414 (3) Medication administration discrepancies and adverse
 415 drug reactions must be recorded and reported immediately to a
 416 physician.

417 Section 9. Section 400.9977, Florida Statutes, is created
 418 to read:

419 400.9977 Protection from abuse, neglect, mistreatment, and
 420 exploitation.—The licensee must develop and implement policies

421 and procedures for the screening and training of employees, the
 422 protection of clients, and the prevention, identification,
 423 investigation, and reporting of abuse, neglect, and
 424 exploitation. This includes the licensee's identification of
 425 clients whose personal histories render them at risk for abusing
 426 other clients, development of intervention strategies to prevent
 427 occurrences, monitoring for changes that would trigger abusive
 428 behavior, and reassessment of the interventions on a regular
 429 basis. A licensee shall implement procedures to:

430 (1) Screen potential employees for a history of abuse,
 431 neglect, or mistreatment of clients. The screening shall include
 432 an attempt to obtain information from previous employers and
 433 current employers and verification with the appropriate
 434 licensing boards and registries.

435 (2) Train employees, through orientation and ongoing
 436 sessions, on issues related to abuse prohibition practices,
 437 including identification of abuse, neglect, mistreatment, and
 438 exploitation, appropriate interventions to deal with aggressive
 439 or catastrophic reactions of clients, the process to report
 440 allegations without fear of reprisal, and recognition of signs
 441 of frustration and stress that may lead to abuse.

442 (3) Provide clients, families, and staff with information
 443 on how and to whom they may report concerns, incidents, and
 444 grievances without the fear of retribution and provide feedback
 445 regarding the concerns that have been expressed. A licensee must
 446 identify, correct, and intervene in situations in which abuse,
 447 neglect, mistreatment, or exploitation is likely to occur,
 448 including:

449 (a) Evaluating the physical environment of the facility to
 450 identify characteristics that may make abuse or neglect more
 451 likely to occur, such as secluded areas.

452 (b) Providing sufficient staff on each shift to meet the
 453 needs of the clients, and ensuring that the staff assigned have
 454 knowledge of the individual clients' care needs. The licensee
 455 shall identify inappropriate behaviors of its staff, such as
 456 using derogatory language, rough handling, ignoring clients
 457 while giving care, and directing clients who need toileting
 458 assistance to urinate or defecate in their beds.

459 (c) Assessing, planning care for, and monitoring clients
 460 with needs and behaviors that might lead to conflict or neglect,
 461 such as clients with a history of aggressive behaviors, clients
 462 who have behaviors such as entering other clients' rooms,
 463 clients with self-injurious behaviors, clients with
 464 communication disorders, and clients who require heavy nursing
 465 care or are totally dependent on staff.

466 (4) Identify events, such as suspicious bruising of
 467 clients, occurrences, patterns, and trends that may constitute
 468 abuse and determine the direction of the investigation.

469 (5) Investigate different types of incidents, identify the
 470 staff member responsible for the initial reporting, investigate
 471 alleged violations, and report results to the proper
 472 authorities. The licensee must analyze the occurrences to
 473 determine what changes are needed, if any, to policies and
 474 procedures to prevent further occurrences and to take all
 475 necessary corrective action depending on the results of the
 476 investigation.

477 (6) Protect clients from harm during an investigation.
 478 (7) Report all alleged violations and all substantiated
 479 incidents, as required under chapters 39 and 415, to the
 480 licensing authorities and all other agencies as required and to
 481 report any knowledge it has of any actions by a court of law
 482 that would indicate an employee is unfit for service.

483 Section 10. Section 400.9978, Florida Statutes, is created
 484 to read:

485 400.9978 Restraints and seclusion; client safety.-

486 (1) The use of physical restraints must be ordered and
 487 documented by a physician and must be consistent with policies
 488 and procedures adopted by the facility. The client or, if
 489 applicable, the client's representative must be informed of the
 490 facility's physical restraint policies and procedures at the
 491 time of the client's admission.

492 (2) The use of chemical restraints is limited to
 493 prescribed dosages of medications as ordered by a physician and
 494 must be consistent with the client's diagnosis and the policies
 495 and procedures adopted by the facility. The client or, if
 496 applicable, the client's representative must be informed of the
 497 facility's chemical restraint policies and procedures at the
 498 time of the client's admission.

499 (3) Based on a physician's assessment, when a client
 500 exhibits symptoms that present an immediate risk of injury or
 501 death to self or others, a physician may issue an emergency
 502 treatment order to immediately administer rapid response
 503 psychotropic medications or other chemical restraints. Each
 504 emergency treatment order must be documented and maintained in

505 the client's record.

506 (a) An emergency treatment order is effective for no more
 507 than 24 hours.

508 (b) Whenever a client is medicated in accordance with this
 509 subsection, the client's representative or responsible party and
 510 the client's physician must be notified as soon as practicable.

511 (4) A client who is prescribed and receiving a medication
 512 that can serve as a chemical restraint for a purpose other than
 513 an emergency treatment order must be evaluated by his or her
 514 physician at least monthly to assess:

515 (a) The continued need for the medication.

516 (b) The level of the medication in the client's blood, as
 517 appropriate.

518 (c) The need for adjustments in the prescription.

519 (5) The licensee shall ensure that clients are free from
 520 unnecessary drugs and physical restraints and are provided
 521 treatment to reduce dependency on drugs and physical restraints.

522 (6) The licensee may use physical restraints only as an
 523 integral part of a comprehensive treatment plan that is intended
 524 to lead to less restrictive means of managing and eliminating
 525 the behavior for which the restraint is applied.

526 (7) Interventions to manage inappropriate client behavior
 527 must be employed with sufficient safeguards and supervision to
 528 ensure that the safety, welfare, and civil and human rights of
 529 each client are adequately protected.

530 Section 11. Section 400.9979, Florida Statutes, is created
 531 to read:

532 400.9979 Background screening; administration and

533 management.-

534 (1) The agency shall require level 2 background screening
 535 for personnel as required in s. 408.809(1)(e) pursuant to
 536 chapter 435 and s. 408.809.

537 (2) The licensee shall maintain personnel records for each
 538 staff member that contain, at a minimum, documentation of
 539 background screening, if applicable, a job description,
 540 documentation of compliance with all training requirements of
 541 this part or applicable rule, the employment application,
 542 references, a copy of all job performance evaluations, and, for
 543 each staff member who performs services for which licensure or
 544 certification is required, a copy of all licenses or
 545 certification held by the staff member.

546 (3) The licensee must:

547 (a) Develop and implement infection control policies and
 548 procedures and include such policies and procedures in the
 549 licensee's policy manual.

550 (b) Maintain liability insurance as defined in s. 624.605.

551 (c) Designate one person as an administrator who is
 552 responsible and accountable for the overall management of the
 553 facility.

554 (d) Designate a person in writing to be responsible for
 555 the facility when the administrator is absent from the facility
 556 for more than 24 hours.

557 (e) Designate in writing a program director who is
 558 responsible for supervising the therapeutic and behavioral
 559 staff, determining the levels of supervision, and determining
 560 room placement for each client.

561 (f) Designate in writing a person to be responsible when
 562 the program director is absent from the facility for more than
 563 24 hours.

564 (g) Obtain approval of the comprehensive emergency
 565 management plan, pursuant to s. 400.9981(2)(e), from the local
 566 emergency management agency. Pending the approval of the plan,
 567 the local emergency management agency shall ensure that the
 568 following agencies, at a minimum, are given the opportunity to
 569 review the plan: the Department of Health, the Agency for Health
 570 Care Administration, and the Division of Emergency Management.
 571 Appropriate volunteer organizations must also be given the
 572 opportunity to review the plan. The local emergency management
 573 agency shall complete its review within 60 days and either
 574 approve the plan or advise the licensee of necessary revisions.

575 (h) Maintain written records in a form and system that
 576 comply with medical and business practices and make such records
 577 available in the facility for review or submission to the agency
 578 upon request. The records shall include:

579 1. A daily census record that indicates the number of
 580 clients currently receiving services in the facility, including
 581 information regarding any public funding of such clients.

582 2. A record of all accidents or unusual incidents
 583 involving any client or staff member that caused, or had the
 584 potential to cause, injury or harm to any person or property
 585 within the facility. Such records must contain a clear
 586 description of each accident or incident, the names of the
 587 persons involved, a description of all medical or other services
 588 provided to these persons specifying who provided such services,

589 and the steps taken to prevent recurrence of such accidents or
 590 incidents.

591 3. A copy of current agreements with third-party
 592 providers.

593 4. A copy of current agreements with each consultant
 594 employed by the licensee and documentation of each consultant's
 595 visits and required written, dated reports.

596 Section 12. Section 400.9980, Florida Statutes, is created
 597 to read:

598 400.9980 Property and personal affairs of clients.-

599 (1) A client shall be given the option of using his or her
 600 own belongings, as space permits; choosing his or her roommate
 601 if practical and not clinically contraindicated; and, whenever
 602 possible, unless the client is adjudicated incompetent or
 603 incapacitated under state law, managing his or her own affairs.

604 (2) The admission of a client to a facility and his or her
 605 presence therein shall not confer on a licensee, administrator,
 606 employee, or representative thereof any authority to manage,
 607 use, or dispose of any property of the client, nor shall such
 608 admission or presence confer on any of such persons any
 609 authority or responsibility for the personal affairs of the
 610 client except that which may be necessary for the safe
 611 management of the facility or for the safety of the client.

612 (3) A licensee, administrator, employee, or representative
 613 thereof may:

614 (a) Not act as the guardian, trustee, or conservator for
 615 any client or any of such client's property.

616 (b) Act as a competent client's payee for social security,

617 veteran's, or railroad benefits if the client provides consent
 618 and the licensee files a surety bond with the agency in an
 619 amount equal to twice the average monthly aggregate income or
 620 personal funds due to the client, or expendable for the client's
 621 account, that are received by a licensee.

622 (c) Act as the power of attorney for a client if the
 623 licensee has filed a surety bond with the agency in an amount
 624 equal to twice the average monthly income of the client, plus
 625 the value of any client's property under the control of the
 626 attorney in fact.

627
 628 The bond under paragraph (b) or paragraph (c) shall be executed
 629 by the licensee as principal and a licensed surety company. The
 630 bond shall be conditioned upon the faithful compliance of the
 631 licensee with the requirements of licensure and shall be payable
 632 to the agency for the benefit of any client who suffers a
 633 financial loss as a result of the misuse or misappropriation of
 634 funds held pursuant to this subsection. Any surety company that
 635 cancel or does not renew the bond of any licensee shall notify
 636 the agency in writing not less than 30 days in advance of such
 637 action, giving the reason for the cancellation or nonrenewal.
 638 Any licensee, administrator, employee, or representative thereof
 639 who is granted power of attorney for any client of the facility
 640 shall, on a monthly basis, notify the client in writing of any
 641 transaction made on behalf of the client pursuant to this
 642 subsection, and a copy of such notification given to the client
 643 shall be retained in each client's file and available for agency
 644 inspection.

645 (4) A licensee, upon mutual consent with the client, shall
 646 provide for the safekeeping in the facility of the client's
 647 personal effects of a value not in excess of \$1,000 and the
 648 client's funds not in excess of \$500 cash and shall keep
 649 complete and accurate records of all such funds and personal
 650 effects received. If a client is absent from a facility for 24
 651 hours or more, the licensee may provide for the safekeeping of
 652 the client's personal effects of a value in excess of \$1,000.

653 (5) Any funds or other property belonging to or due to a
 654 client or expendable for his or her account that is received by
 655 licensee shall be trust funds and shall be kept separate from
 656 the funds and property of the licensee and other clients or
 657 shall be specifically credited to such client. Such trust funds
 658 shall be used or otherwise expended only for the account of the
 659 client. At least once every month, unless upon order of a court
 660 of competent jurisdiction, the licensee shall furnish the client
 661 and the client's representative a complete and verified
 662 statement of all funds and other property to which this
 663 subsection applies, detailing the amount and items received,
 664 together with their sources and disposition. In any event, the
 665 licensee shall furnish such statement annually and upon the
 666 discharge or transfer of a client. Any governmental agency or
 667 private charitable agency contributing funds or other property
 668 to the account of a client shall also be entitled to receive
 669 such statement monthly and upon the discharge or transfer of the
 670 client.

671 (6) (a) In addition to any damages or civil penalties to
 672 which a person is subject, any person who:

673 1. Intentionally withholds a client's personal funds,
 674 personal property, or personal needs allowance, or who demands,
 675 beneficially receives, or contracts for payment of all or any
 676 part of a client's personal property or personal needs allowance
 677 in satisfaction of the facility rate for supplies and services;
 678 or

679 2. Borrows from or pledges any personal funds of a client,
 680 other than the amount agreed to by written contract under s.
 681 429.24,
 682
 683 commits a misdemeanor of the first degree, punishable as
 684 provided in s. 775.082 or s. 775.083.

685 (b) Any licensee, administrator, employee, or
 686 representative thereof who is granted power of attorney for any
 687 client of the facility and who misuses or misappropriates funds
 688 obtained through this power commits a felony of the third
 689 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 690 775.084.

691 (7) In the event of the death of a client, a licensee
 692 shall return all refunds, funds, and property held in trust to
 693 the client's personal representative, if one has been appointed
 694 at the time the licensee disburses such funds, or, if not, to
 695 the client's spouse or adult next of kin named in a beneficiary
 696 designation form provided by the licensee to the client. If the
 697 client has no spouse or adult next of kin or such person cannot
 698 be located, funds due the client shall be placed in an interest-
 699 bearing account and all property held in trust by the licensee
 700 shall be safeguarded until such time as the funds and property

701 are disbursed pursuant to the Florida Probate Code. Such funds
 702 shall be kept separate from the funds and property of the
 703 licensee and other clients of the facility. If the funds of the
 704 deceased client are not disbursed pursuant to the Florida
 705 Probate Code within 2 years after the client's death, the funds
 706 shall be deposited in the Health Care Trust Fund administered by
 707 the agency.

708 (8) The agency, by rule, may clarify terms and specify
 709 procedures and documentation necessary to administer the
 710 provisions of this section relating to the proper management of
 711 clients' funds and personal property and the execution of surety
 712 bonds.

713 Section 13. Section 400.9981, Florida Statutes, is created
 714 to read:

715 400.9981 Rules establishing standards.-

716 (1) It is the intent of the Legislature that rules
 717 published and enforced pursuant to this part and part II of
 718 chapter 408 include criteria to ensure reasonable and consistent
 719 quality of care and client safety. Rules should make reasonable
 720 efforts to accommodate the needs and preferences of clients to
 721 enhance the quality of life in transitional living facilities.

722 (2) The agency, in consultation with the Department of
 723 Health, may adopt and enforce rules to implement this part and
 724 part II of chapter 408, which shall include reasonable and fair
 725 criteria in relation to:

726 (a) The location of transitional living facilities.

727 (b) The number of qualifications of all personnel,
 728 including management, medical, nursing, and other professional

729 personnel and nursing assistants and support personnel having
 730 responsibility for any part of the care given to clients. The
 731 licensee must have enough qualified professional staff available
 732 to carry out and monitor the various professional interventions
 733 in accordance with the stated goals and objectives of each
 734 comprehensive treatment plan.

735 (c) Requirements for personnel procedures, insurance
 736 coverage, reporting procedures, and documentation necessary to
 737 implement this part.

738 (d) Services provided to clients of transitional living
 739 facilities.

740 (e) The preparation and annual update of a comprehensive
 741 emergency management plan in consultation with the Division of
 742 Emergency Management. At a minimum, the rules must provide for
 743 plan components that address emergency evacuation
 744 transportation; adequate sheltering arrangements; postdisaster
 745 activities, including provision of emergency power, food, and
 746 water; postdisaster transportation; supplies; staffing;
 747 emergency equipment; individual identification of clients and
 748 transfer of records; communication with families; and responses
 749 to family inquiries.

750 Section 14. Section 400.9982, Florida Statutes, is created
 751 to read:

752 400.9982 Violations; penalties.—

753 (1) Each violation of this part and rules adopted pursuant
 754 thereto shall be classified according to the nature of the
 755 violation and the gravity of its probable effect on facility
 756 clients. The agency shall indicate the classification on the

757 written notice of the violation as follows:

758 (a) Class "I" violations are defined in s. 408.813. The
 759 agency shall issue a citation regardless of correction and
 760 impose an administrative fine of \$5,000 for an isolated
 761 violation, \$7,500 for a patterned violation, and \$10,000 for a
 762 widespread violation. Violations may be identified and a fine
 763 must be levied notwithstanding the correction of the deficiency
 764 giving rise to the violation.

765 (b) Class "II" violations are defined in s. 408.813. The
 766 agency shall impose an administrative fine of \$1,000 for an
 767 isolated violation, \$2,500 for a patterned violation, and \$5,000
 768 for a widespread violation. A fine must be levied
 769 notwithstanding the correction of the deficiency giving rise to
 770 the violation.

771 (c) Class "III" violations are defined in s. 408.813. The
 772 agency shall impose an administrative fine of \$500 for an
 773 isolated violation, \$750 for a patterned violation, and \$1,000
 774 for a widespread violation. If a deficiency giving rise to a
 775 class "III" violation is corrected within the time specified by
 776 the agency, a fine may not be imposed.

777 (d) Class "IV" violations are defined in s. 408.813. The
 778 agency shall impose an administrative fine for a cited class IV
 779 violation in an amount not less than \$100 and not exceeding \$200
 780 for each violation.

781 Section 15. Section 400.9983, Florida Statutes, is created
 782 to read:

783 400.9983 Receivership proceedings.—The agency may apply s.
 784 429.22 with regard to receivership proceedings for transitional

785 living facilities.

786 Section 16. Section 400.9984, Florida Statutes, is created
787 to read:

788 400.9984 Interagency communication.—The agency, the
789 department, the Agency for Persons with Disabilities, and the
790 Department of Children and Families shall develop electronic
791 systems to ensure that relevant information pertaining to the
792 regulation of transitional living facilities and clients is
793 timely and effectively communicated among agencies in order to
794 facilitate the protection of clients. Electronic sharing of
795 information shall include, at a minimum, a brain and spinal cord
796 injury registry and a client abuse registry.

797 Section 17. Section 400.805, Florida Statutes, is
798 repealed.

799 Section 18. Paragraph (b) of subsection (4) of section
800 381.78, Florida Statutes, is amended to read:

801 381.78 Advisory council on brain and spinal cord
802 injuries.—

803 (4) The council shall:

804 (b) Annually appoint a five-member committee composed of
805 one individual who has a brain injury or has a family member
806 with a brain injury, one individual who has a spinal cord injury
807 or has a family member with a spinal cord injury, and three
808 members who shall be chosen from among these representative
809 groups: physicians, other allied health professionals,
810 administrators of brain and spinal cord injury programs, and
811 representatives from support groups with expertise in areas
812 related to the rehabilitation of individuals who have brain or

813 spinal cord injuries, except that one and only one member of the
 814 committee shall be an administrator of a transitional living
 815 facility. Membership on the council is not a prerequisite for
 816 membership on this committee.

817 1. The committee shall perform onsite visits to those
 818 transitional living facilities identified by the Agency for
 819 Health Care Administration as being in possible violation of the
 820 statutes and rules regulating such facilities. ~~The committee~~
 821 ~~members have the same rights of entry and inspection granted~~
 822 ~~under s. 400.805(4) to designated representatives of the agency.~~

823 2. Factual findings of the committee resulting from an
 824 onsite investigation of a facility pursuant to subparagraph 1.
 825 shall be adopted by the agency in developing its administrative
 826 response regarding enforcement of statutes and rules regulating
 827 the operation of the facility.

828 3. Onsite investigations by the committee shall be funded
 829 by the Health Care Trust Fund.



830 4. Travel expenses for committee members shall be
 831 reimbursed in accordance with s. 112.061.

832 5. Members of the committee shall recuse themselves from
 833 participating in any investigation that would create a conflict
 834 of interest under state law, and the council shall replace the
 835 member, either temporarily or permanently.

836 Section 19. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1323 Medicaid Eligibility
SPONSOR(S): Health Innovation Subcommittee; Nuñez
TIED BILLS: IDEN./SIM. **BILLS:** SB 1748

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	11 Y, 2 N, As CS	Poche	Shaw
2) Health Care Appropriations Subcommittee		 Clark	Pridgeon 

SUMMARY ANALYSIS

The bill amends s. 409.902, F.S., relating to Medicaid eligibility.

Currently, some individuals applying for long-term care Medicaid services are using various methods to shelter their assets in order to become eligible for Medicaid.

The bill requires the Department of Children and Families (DCF) to apply additional asset transfer limitations for individuals applying for Medicaid nursing facility services, institutional hospice services, and home and community-based waiver programs.

- The bill provides certain restrictions on personal services contracts, which are used to transfer assets to a family member or caregiver in return for specific services.
- The bill requires DCF to determine an institutional spouse ineligible for Medicaid if he or she refuses to provide information about the community spouse or cooperate in the pursuit of court ordered medical support or the recovery of Medicaid expenses paid by the state on the behalf of the institutional spouse.

The bill requires the Agency for Health Care Administration (AHCA) to seek recovery of all Medicaid-covered expenses and pursue court-ordered medical support in instances of a spouse refusing to make their resources available to a spouse seeking Medicaid long-term care services.

The fiscal impact of the bill is indeterminate, but will likely have a significant positive impact to the state through imposing stricter regulations on eligibility requirements for Medicaid long-term care. The bill directs AHCA to seek recovery of improper Medicaid payments which may require the Agency to amend their contingency based contract for third party liability recoveries. The cost of this contract is funded through the recoveries received through the vendor's efforts. The amounts recovered are expected to exceed the contract cost.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Medicaid Overview

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by AHCA and financed by federal and state funds. AHCA delegates certain functions to other state agencies, including the Department of Children and Families (DCF), the Agency for Persons with Disabilities (APD), and the Department of Elderly Affairs (DOEA).

The structure of each state's Medicaid program varies, but what states must pay for are largely determined by the federal government, as a condition of receiving federal funds. Federal law sets the amount, scope, and duration of services offered in the program, among other requirements. These federal requirements create an entitlement that comes with constitutional due process protections.

Florida Medicaid is the second largest single program in the state behind public education, representing 30 percent of the total FY 2012-13 budget. Medicaid general revenue expenditures represent 20 percent of the total general revenue funds appropriated in FY 2012-13. Florida's program is the 4th largest in the nation, and the 5th largest in terms of expenditures. Current estimates indicate the program will cost \$20.8 billion in FY 2012-2013. By FY 2013-2014, the estimated program cost is \$22.1 billion.

Medicaid Long-Term Care

Long-term care is currently provided to elderly and disabled Medicaid recipients through nursing home placement and through home and community based services. Home and community based services provide care in a community setting instead of a nursing home or other institution. Home and community based services are provided through six Medicaid waiver programs and one state plan program administered by DOEA in partnership with AHCA. These waiver programs are administered through contracts with the 11 Aging Resource Centers¹ and local service providers, and provide alternative, less restrictive long-term care options for elders who qualify for skilled nursing home care.

The Medicaid eligibility income threshold for institutional care placement, home and community based care services, and hospice services, is 300 percent of the Supplemental Security Income (SSI) federal benefit rate.² The current SSI federal benefit rate is \$710 for an individual,³ therefore, individuals with incomes under \$2,130 per month are eligible for Medicaid long-term care services.⁴

¹ The 2004 Legislature created the Aging Resource Center initiative to reduce fragmentation in the elder services system. To provide easier access to elder services, the Legislature directed DOEA to establish a process to help the 11 area agencies on aging transition to Aging Resource Centers.

² Rule 65A-1.713(1)(d), F.A.C.

³ Social Security Administration, see <http://www.ssa.gov/oact/cola/SSI.html> (last viewed on March 17, 2013).

⁴ Florida Department of Children and Families, *SSI-Related Programs Fact Sheets*, January 2013, page 10, available at www.dcf.fl.us/programs/access/docs/ssifactsheet.pdf

Medicaid Long-Term Care Planning

A 2009 study by the National Alliance for Caregiving and AARP found that about 43.5 million Americans look after someone age 50 or older, which is a 28 percent increase from 2004.⁵ Some individuals, with assistance from financial planners and attorneys, have developed methods of arranging assets in such a way that they are not countable when Medicaid eligibility is determined. Elder law attorneys across the country actively advertise services to assist elderly individuals with personal service contracts and other asset protection methods. For example, the website of a South Florida law firm prominently displays the following sentences on their website:

- “Asset Protection For People With Too Much Income or Assets to Qualify for Government Programs;” and
- “For ten years we have successfully helped families preserve their assets and qualify for Florida Nursing Home Medicaid benefits and Assisted Living public benefits.”⁶

Transfer of Assets

According to DCF, some individuals, prior to entering a nursing facility or enrolling in a Medicaid home and community based service waiver program, transfer accumulated assets to a relative through a contract which provides that the relative will provide personal services to the individual for a specified period of time.⁷ Current DCF policy does not preclude the transfer of funds to relatives when contracts are drawn up to prepay for future personal services.⁸ According to DCF, many of the contracted services incorporated into the contracts are services that close relatives would normally provide without charge such as visitation, transportation, entertainment, and oversight of medical care.⁹

If a transfer of assets was made in the form of a personal services contract, within a 36 month (3 year) look back period, DCF must make a determination if the contracted services were for fair market value.¹⁰ The look back period is calculated from the date of application for Medicaid.¹¹ If a transfer of assets for less than fair market value is found, the state must withhold payment for nursing facility care and other long-term care services for a period of time referred to as the penalty period. The length of the penalty period is determined by dividing the value of the transferred asset by the average monthly private-pay rate for nursing facility care in the state.¹²

Spousal Impoverishment

Section 1924 of the Social Security Act provides requirements to prevent "spousal impoverishment," which can leave the spouse who is still living at home in the community with little or no income or resources.¹³ When the couple applies for Medicaid, an assessment of their resources is made and a protected resource amount of \$115,920¹⁴ is set aside for the community spouse and the remainder is considered available for the individual applying for Medicaid.¹⁵

⁵ National Alliance for Caregiving (in collaboration with AARP), *Caregiving in the U.S., Executive Summary*, 2009, available at <http://www.caregiving.org/pdf/research/FINALRegularExSum50plus.pdf> (last viewed on March 17, 2013).

⁶ See <http://www.buxtonlaw.com/flmedicaidplanning.shtml> (last viewed on March 17, 2013).

⁷ Florida Department of Children and Families, *Staff Analysis and Economic Impact- HB 1323*, pages 1-2 (on file with the Health Innovation Subcommittee staff).

⁸ Id.

⁹ Id.

¹⁰ Rule 65A-1.712(3), F.A.C.

¹¹ Id.

¹² Rule 65A-1.712(3)(g)1., F.A.C.; the average monthly private pay nursing facility rate is \$7,362 per rule 65A-1.716(5)(d), F.A.C.

¹³ 42 U.S.C. 1396r-5(d).

¹⁴ This is an amount known as the "community spouse resource allocation". See *supra*, FN 4 at page 12.

¹⁵ Rule 65A-1.712(4), F.A.C.

Additionally, section 1924 of the Social Security Act provides that an individual applying for Medicaid cannot be determined ineligible for assistance based on assets of their spouse when:

- The applicant assigns his or her rights to support from the community spouse to the state;
- The applicant is physically or mentally unable to assign his right by the state has the right to bring a support proceeding against the community spouse; or
- The state determines the denial of eligibility would work an undue hardship.¹⁶

According to DCF, when an applicant signs a document assigning his or her rights to the state, the state has the authority to seek financial support from the community spouse for Medicaid funds spent on the spouse of the nursing facility.¹⁷ While DCF indicates that it has authority to seek financial support from the community spouse under these circumstances, there is no mechanism to actually recover funds from the community spouse.¹⁸

Deficit Reduction Act

The Federal Deficit Reduction Act of 2005 (DRA)¹⁹ contained provisions aimed at discouraging the use of “Medicaid planning” techniques and to impose penalties on transactions which are intended to protect wealth while enabling access to public benefits.²⁰ The Congressional Budget Office (CBO) estimated that the DRA would reduce federal Medicaid spending by \$11.5 billion over the first five years and \$43.2 billion within ten years. The DRA made changes to:

- Medicaid transfer of asset rules;
- Medicaid annuity rules;
- spousal impoverishment rules;
- home equity rules; and
- rules pertaining to treatment of continuing care retirement community entrance fees.

Transfer of Assets

The Act extended the “look-back period” for any transfers of assets from 36 months to 60 months, on or after February 8, 2006. In addition, the Act changed the start date of the penalty period, which is the period during which an individual is ineligible for Medicaid payment for long-term care services because of a transfer of assets for less than fair market value.²¹ The Act changed the start date of the penalty period from the month of the transfer of assets to the date of application for Medicaid.²²

Spousal Impoverishment

When a couple applies for Medicaid, an assessment of their resources is made and a protected resource amount of \$115,920 is set aside for the community spouse and the remainder is considered available for the individual applying for Medicaid. This protected amount is known as the Community Spouse Resource Allowance (CSRA). The DRA provided that an increase in the CSRA cannot be granted until the maximum available income of the institutionalized spouse is allocated to the community spouse.²³

¹⁶ 42 U.S.C. 1396r-(5)(c)(3)(C).

¹⁷ See supra, FN 7 at pages 2-3.

¹⁸ Id. at page 3.

¹⁹ P.L. 109-171 (2005).

²⁰ Department of Health and Human Services, Centers for Medicare and Medicaid, *The Deficit Reduction Act: Important Facts for State Government Officials*, available at <https://www.cms.gov/DeficitReductionAct/Downloads/Checklist1.pdf> (last viewed on March 18, 2013).

²¹ Id.

²² Id.

²³ Id.

Recovery of Medicaid-Covered Expenses

Federal regulations²⁴ and the Florida Medicaid Third-Party Liability (TPL) Act²⁵ allow for recovery of amounts paid for medical expenses by Medicaid for which there is another liable third party (i.e., the recipient has other insurance coverage, such as private insurance or Medicare). AHCA has a current contract with a Medicaid third party liability vendor, Affiliated Computer Services (ACS). It is the role of the ACS to identify potential third party payors and to recoup from them costs that have been paid by Medicaid. Contract costs are paid through the funds recovered by the contractor.

Effect of Proposed Changes

The bill requires DCF to apply additional asset transfer limitations for individuals applying for Medicaid nursing facility services, institutional hospice services, and home and community-based waiver programs. The new limitations apply to asset transfers made after July 1, 2013.

The bill applies the following new conditions to individuals who enter into personal services contracts:

- The contracted services must not duplicate services that would be available through other sources or providers, such as Medicaid, Medicare, private insurance, or another legally obligated third party;
- The contracted services must directly benefit the individual and are not services that are normally provided out of consideration for the individual;
- The cost to deliver the services must be computed in a manner that reflects the actual number of hours to be expended and the contract must clearly identify each specific service and the average number of hours required to deliver each service each month;
- The hourly rate for each contracted service must be equal to or less than the amount normally charged by a professional who traditionally provides the same or similar services;
- The cost of contracted services must be provided on a prospective basis only and does not apply to services provided before July 1, 2013; and
- The contract must provide fair compensation to the individual during her or his lifetime as set forth in the life expectancy tables published by the Office of the Actuary of the Social Security Administration.

The bill requires DCF to determine an institutional spouse to be ineligible for Medicaid if she or he, or the person acting on her or his behalf, refuses to provide information about the community spouse or cooperate in the pursuit of court-ordered medical support or the recovery of Medicaid expenses paid by the state on her or his behalf.

The bill requires AHCA to seek recovery of all Medicaid-covered expenses and pursue court-ordered medical support from the community spouse when she or he refuses to make her or his assets available to the institutional spouse.

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 409.902, F.S., relating to designated single state agency; payment requirements; program title; release of medical records.

Section 2: Provides an effective date of upon becoming a law.

²⁴ 42 U.S.C. §1396k(a).

²⁵ S. 409.910, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill could result in savings to the state by applying stricter asset transfer limitations for certain individuals applying for nursing facility services under the Medicaid program. Additionally, AHCA is directed to seek recovery for monies paid by Medicaid on behalf of the eligible recipient.

2. Expenditures:

AHCA would pursue the recovery of Medicaid funds from the community spouse through the use of the Medicaid Third Party Liability (TPL) vendor. The current TPL contract would need to be amended in order to include this function. This vendor is typically paid a contingency fee based on its collections. The fee paid to the vendor for pursuing the Medicaid funds from this legislation would be netted from the recoveries received.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Nursing home and Medicaid long-term care managed care providers may experience a positive fiscal impact if a greater number of individuals are required to pay for their care with private pay, rather than Medicaid.

D. FISCAL COMMENTS:

The fiscal impact of the bill is indeterminate; but will likely be positive due to the amount of collections exceeding the cost of the contingency contract.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants appropriate rule-making authority to DCF to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 34 and 35, the terms "directly benefit" and "consideration" lack specificity. It will be difficult to determine how a provided service directly benefits the recipient of the service. Also, services and acts "normally provided out of consideration" are not clear in the meaning of "consideration".

On lines 38 and 39, the bill requires a contract for personal care services to specify the number of hours to be expended. It does not specify over what time period those hours will span. It is recommended that language be added indicating that the contract must specify the number of hours to be expended "over the life of the contract."

On lines 42 through 44, the bill requires the hourly rate at which personal care services are to be billed under the contract is no more than the amount normally charged by a professional who traditionally provides the same or similar services. Professionals who provide personal care services charge different rates according to the market in which they operate. The hourly rate to provide certain services may likely be higher in a major city compared to the hourly rate compared in a rural county. It is recommended that language be added to the bill to read:

"4. The hourly rate for each contracted service is no more than the usual and customary amount charged by a professional who traditionally provides the same or similar services in the community where the contracted services are to be performed."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2013, the Health Innovation Subcommittee adopted one amendment to House Bill 1323. The amendment removed specific requirements to be met by DCF if a community spouse refused to make his or her resources available to his or her institutional spouse. The amendment required DCF to declare an institutional spouse ineligible for Medicaid if he or she refused to provide information about the community spouse, or cooperate in the pursuit of court order medical support or the recovery of Medicaid benefits paid by the state on his or her behalf.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.

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A bill to be entitled
 An act relating to Medicaid eligibility; amending s.
 409.902, F.S.; providing asset transfer limitations
 for the determination of eligibility for certain
 nursing facility services under the Medicaid program
 after a specified date; requiring the Department of
 Children and Families to determine the institutional
 spouse ineligible for Medicaid under certain
 circumstances; authorizing the Agency for Health Care
 Administration to recover certain Medicaid expenses;
 authorizing the department to adopt rules; providing
 an effective date.

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

Section 1. Subsection (9) is added to section 409.902,
 Florida Statutes, to read:

409.902 Designated single state agency; payment
 requirements; program title; release of medical records;
eligibility requirements.-

(9) In determining eligibility for nursing facility
 services, including institutional hospice services and home and
 community-based waiver programs under the Medicaid program, the
 Department of Children and Families shall apply the asset
 transfer limitations specified in paragraph (a) for transfers
 made after July 1, 2013.

(a) An individual who enters into a personal services
 contract with a relative is considered to have transferred

29 assets without fair compensation to qualify for Medicaid unless:

30 1. The contracted services do not duplicate services
31 available through other sources or providers, such as Medicaid,
32 Medicare, private insurance, or another legally obligated third
33 party;

34 2. The contracted services directly benefit the individual
35 and are not services normally provided out of consideration for
36 the individual;

37 3. The actual cost to deliver services is computed in a
38 manner that clearly reflects the actual number of hours to be
39 expended and the contract clearly identifies each specific
40 service and the average number of hours required to deliver each
41 service each month;

42 4. The hourly rate for each contracted service is no more
43 than the amount normally charged by a professional who
44 traditionally provides the same or similar services;

45 5. The cost of contracted services is provided on a
46 prospective basis only and does not apply to services provided
47 before July 1, 2013; and

48 6. The contract for services provides fair compensation to
49 the individual during his or her lifetime as set forth in the
50 life expectancy tables published by the Office of the Chief
51 Actuary of the United States Social Security Administration.

52 (b) When determining eligibility for nursing facility
53 services, including institutional hospice services and home and
54 community based waiver programs under the Medicaid program, the
55 Department of Children and Families shall determine the
56 institutional spouse to be ineligible for Medicaid if he or she,

57 | or the person acting on his or her behalf, refuses to provide
58 | information about the community spouse or cooperate in the
59 | pursuit of court-ordered medical support or the recovery of
60 | Medicaid expenses paid by the state on his or her behalf.

61 | (c) The Agency for Health Care Administration shall seek
62 | recovery of all Medicaid-covered expenses and pursue court-
63 | ordered medical support from the community spouse when he or she
64 | refuses to make his or her assets available to the institutional
65 | spouse.

66 | (d) The Department of Children and Families may adopt
67 | rules to implement this subsection.

68 | Section 2. This act shall take effect upon becoming a law.

Amendment No. Strike all

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health Care Appropriations
2 Subcommittee

3 Representative Schwartz offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (9) is added to section 409.902,

8 Florida Statutes, to read:

9 409.902 Designated single state agency; payment
10 requirements; program title; release of medical records;
11 eligibility requirements.—

12 (9) The Legislature hereby authorizes the creation of a
13 task force to examine and make recommendations to the Department
14 of Children and Families to evaluate the effect of personal
15 service contracts and spousal refusal upon Florida families.
16 The task force membership shall be made up of one member
17 appointed by the Department of Children and Families, one member
18 appointed by the Florida American Association of Retired
19 Persons; one direct care provider, one member appointed by the
20 Florida Association of Health Plans, one member appointed by the

Amendment No. Strike all

21 Florida Hospice and Palliative Care Association, one member
 22 appointed by the Florida Council on Aging, one member appointed
 23 by the Florida Bar, and one member appointed by providers of
 24 durable medical equipment. The task force shall submit a report
 25 detailing its recommendations to the Speaker of the House of
 26 Representatives, President of the Senate, and the Governor by
 27 July 1, 2014.

28 Section 2. This act shall take effect upon becoming a law.

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T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:
An act relating to the Department of Children and
Families; amending s. 409.902, F.S.; authorizing the
creation of a task force regarding Medicaid
eligibility; providing an effective date.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health Care Appropriations
2 Subcommittee

3 Representative Schwartz offered the following:

4
5 **Amendment**

6 Remove lines 27-68 and insert:

7 a) An individual who enters into a personal services
8 contract with a relative is considered to have transferred
9 assets without fair compensation to qualify for Medicaid unless:

10 1. The contracted services do not duplicate in frequency
11 and duration services available through other sources or
12 providers, such as Medicaid, Medicare, private insurance, or
13 another legally obligated third party;

14 2. The contracted services directly benefit the individual
15 and are in the individual's best interest;

16 3. The actual cost to deliver the services is computed in
17 a manner that clearly reflects the expected average number of
18 hours to be expended on a weekly or monthly basis, recognizing
19 that services shall be performed on an "as needed" basis, and
20 the contract clearly identifies each specific service;

Amendment No. 1

21 4. The hourly rate for each contracted service is equal to
22 or less than the amount normally charged by a professional who
23 traditionally provides the same or similar services;

24 5. The contracted care services are provided on a
25 prospective basis beginning with the execution of the contract;

26 6. The contract for services provides fair compensation to
27 the individual during his or her lifetime as set forth in the
28 life expectancy tables published by the Office of the Chief
29 Actuary of the United States Social Security Administration;

30 (b) The agency shall seek recovery of all Medicaid-covered
31 expenses and pursue court-ordered medical support for a
32 recipient from the nonrecipient spouse if she or he refuses to
33 make her or his assets available to the recipient spouse and the
34 recipient spouse has assigned his or her right to support to the
35 state.

36 (c) The Agency for Health Care Administration shall seek
37 recovery of all Medicaid-covered expenses and pursue court-
38 ordered medical support from the community spouse when he or she
39 refuses to make his or her assets available to the institutional
40 spouse.

41 (d) The Department of Children and Families may adopt
42 rules to implement this subsection.

43 Section 2. This act shall take effect October 1, 2013.

44

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health Care Appropriations
 2 Subcommittee
 3 Representative Schwartz offered the following:

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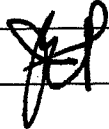
Amendment

Remove line 68 and insert:

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 125 Program of All-inclusive Care for the Elderly
SPONSOR(S): Health Innovation Subcommittee; Smith
TIED BILLS: IDEN./SIM. **BILLS:** SB 440

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	12 Y, 0 N, As CS	Entress	Shaw
2) Health Care Appropriations Subcommittee		Pridgeon	Pridgeon 
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Program of All-inclusive Care for the Elderly (PACE) is a federal program, which integrates Medicaid and Medicare programs, and is available to qualified Floridians in need of nursing home level of care. PACE offers a continuum of services to individuals in the community with the goal of delaying nursing home entry. There are currently four PACE providers operating in Florida, serving clients in six counties.

The bill creates two PACE centers to serve Hernando and Pasco Counties. One PACE centers must be a not-for-profit organization with more than 30 years' experience as a licensed hospice and currently be a licensed hospice serving individuals and families in Hernando and Pasco counties. The other PACE center must be a private health care organization, the sole member of which is a private, not-for-profit corporation that owns and manages health care organizations licensed in Hernando and Pasco counties.

The bill exempts the two PACE centers from the state requirements of health care service programs and from the state requirements of contracts for long-term care services within community diversion pilot project areas.

The bill requires the Agency for Health Care Administration (AHCA), in consultation with the Department of Elder Affairs (DOEA) to approve up to 150 initial enrollees for each PACE center.

The bill specifies that the requirements for each PACE site are subject to federal approval of the application to be a PACE site.

Funding for the new PACE centers is subject to an appropriation.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Program for All-Inclusive Care for the Elderly (PACE) is a federal program, which integrates Medicare and Medicaid programs to provide an array of preventive, primary, acute, home and community-based, and long-term care services, with the goal of delaying nursing home admission.¹ The PACE model was tested through CMS demonstration projects that began in the mid-1980s and was established as a permanent Medicare program by the Balancing Budget Act of 1997.² A PACE organization is a non-profit private or public entity primarily engaged in providing PACE health care services.³ As of June 3, 2011, there were approximately 20,000 PACE participants and 80 operational PACE organizations throughout 30 states.⁴

Payment

PACE providers receive both Medicare and Medicaid capitated payments and are responsible for providing the full continuum of medical and long-term care services.⁵ In addition, PACE sites receive an enhanced capitation payment from Medicare, beyond that of a traditional Medicare health maintenance organization.⁶ In exchange, PACE organizations assume full financial risk for all enrollee care, including nursing home care.⁷ The rate is specified in the PACE agreement, set up between CMS, AHCA, and the PACE providers.⁸

PACE covers a variety of services, including, but not limited to:

- Adult day care;
- Transportation;
- Prescription drugs;
- Meals;
- Hospital care;
- Primary care; and
- Physical therapy.⁹

Florida PACE

¹ OPPAGA Analysis of Rates for Florida's Program for All-Inclusive Care for the Elderly, OPPAGA research memorandum (January 4, 2013).

² Pub. 100-11 Programs of All-Inclusive Care for the Elderly (PACE) Manual, CMS Manual System, page 2, accessible at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Support/Integrating-Care/Program-of-All-Inclusive-Care-for-the-Elderly-PACE/Program-of-All-Inclusive-Care-for-the-Elderly-PACE.html>.

³ PACE benefits, Medicaid.gov, accessible at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Support/Integrating-Care/Program-of-All-Inclusive-Care-for-the-Elderly-PACE/PACE-Benefits.html>.

⁴ Pub. 100-11 Programs of All-Inclusive Care for the Elderly (PACE) Manual, CMS Manual System, page 2, accessible at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Support/Integrating-Care/Program-of-All-Inclusive-Care-for-the-Elderly-PACE/Program-of-All-Inclusive-Care-for-the-Elderly-PACE.html>.

⁵ Program for All-Inclusive Care for the Elderly, Florida Department of Elder Affairs, accessible at: <http://elderaffairs.state.fl.us/does/pace.php>.

⁶ *Id.*

⁷ OPPAGA Analysis of Rates for Florida's Program for All-Inclusive Care for the Elderly, OPPAGA research memorandum (January 4, 2013).

⁸ *Id.*

⁹ Quick Fact about Programs of All-inclusive Care for the Elderly, Centers for Medicare & Medicaid Services, accessible at: <http://www.bing.com/search?q=cms+quick+facts+about+pace&src=IE-SearchBox&FORM=IE8SRC>.

The Florida PACE project is one project among many that provide alternative, long-term care options for elders who qualify for Medicare and the state Medicaid program. The PACE project was initially authorized in chapter 98-327, Laws of Florida, and is codified in s. 430.707(2), F.S. The PACE model targets individuals who would otherwise qualify for Medicaid nursing home placement and provides them with a comprehensive array of home and community based services at a cost less than the cost of nursing home care.¹⁰ The PACE project is administered by DOEA in consultation with AHCA.¹¹ There are currently four PACE providers in Florida, serving clients in Hillsborough, Miami-Dade, Collier, Lee, Charlotte, and Pinellas counties.¹² As of February 2013, there were 807 individuals in Florida using PACE services.¹³

To receive PACE, an individual must meet the following qualifications:

- Be 55 years old or older;
- Live in a service area of a PACE organization;
- Meet the need for nursing home level of care (as determined by the Department of Elder Affairs)¹⁴;
- Be able to live safely in the community with the help of PACE services;¹⁵ and
- Be eligible for Medicare or Medicaid.¹⁶

Florida PACE programs are subject to funding provided in the General Appropriation Act¹⁷ The capitated rate is negotiated between the Agency for Health Care Administration (AHCA) and the provider and must meet Center for Medicaid and Medicare Services (CMS) guidelines.¹⁸

PACE providers may contract with AHCA to participate in the Long-Term Care Managed Care Program. PACE providers are not subject to the procurement requirements or the regional plan number limits of the Long Term Care Managed Care Program.

Approval of PACE Sites

To become a PACE provider, an organization must submit an application to CMS, along with a letter from AHCA stating that AHCA considers the entity to be qualified to be a PACE organization and that AHCA is willing to enter into a PACE program agreement with the entity.¹⁹ CMS must inform the applicant of approval or disapproval within 90 days of receiving all required information.²⁰

PACE organizations must:

- Have a governing board that includes community representation;
- Have a physical site to provide adult day services;
- Have a defined service area;
- Be able to provide the complete service package regardless of frequency or duration of services;

¹⁰ Program for All-Inclusive Care for the Elderly, Florida Department of Elder Affairs, accessible at: <http://elderaffairs.state.fl.us/does/pace.php>.

¹¹ *Id.*

¹² *Id.*

¹³ PACE Enrollments Self Reported by Health Plan, Florida Department of Elder Affairs, accessible at: [www.PACE_Monthly_Enrollment_Report\[1\].pdf](http://www.PACE_Monthly_Enrollment_Report[1].pdf).

¹⁴ Capitation Rate Development for PACE program, Milliman, accessible at:

http://elderaffairs.state.fl.us/does/diversion/Capitation_Rates_2012_2013.pdf (September 2012-August 2013).

¹⁵ Quick Fact about Programs of All-inclusive Care for the Elderly, Centers for Medicare & Medicaid Services, accessible at: <http://www.bing.com/search?q=cms+quick+facts+about+pace&src=IE-SearchBox&FORM=IE8SRC>.

¹⁶ Program for All-Inclusive Care for the Elderly, Florida Department of Elder Affairs, accessible at: <http://elderaffairs.state.fl.us/does/pace.php>.

¹⁷ S. 409.981(4), F.S.

¹⁸ *Id.*

¹⁹ 42 CFR 460.12.

²⁰ 42 CFR 460.20.

- Have safeguards against conflict of interest; and
- Be able to demonstrate fiscal soundness.²¹

A PACE organization must employ or contract with a program director who is responsible for oversight and administration of the entity and a medical director who is responsible for the delivery of participant care, for clinical outcomes, and for the implementation, as well as oversight, of the quality assessment and performance improvement program.²² Among other requirements, the PACE organization must have an organizational chart,²³ have an insolvency plan,²⁴ and have a program agreement between the provider, CMS, and AHCA.²⁵ This process typically takes at least one year to complete.²⁶

In addition, in order for two PACE providers to operate in the same geographic area, the providers are responsible for identifying that there is a need and enough potential participants for each PACE provider to be viable.²⁷ Documentation must be submitted to AHCA that will insure that neither provider will have to compete for the same recipients.²⁸

The following sections of law approved or amended PACE sites in Florida:

- Section 3, chapter 2006-25, L.O.F., included proviso language in the 2006-2007 GAA to authorize 150 additional clients for the existing PACE project in Miami-Dade County and funding for the development of PACE projects to serve 200 clients in Martin and St. Lucie counties, and 200 clients in Lee County.
- Section 3, chapter 2008-152, L.O.F., included proviso language in the 2008-09 GAA to reallocate 150 unused PACE slots to Miami-Dade, Lee and Pinellas Counties. Each site received 50 slots.
- Section 20, chapter 2009-55, L.O.F., directed the AHCA, upon federal approval of an application to be a site for PACE, to contract with one private, not-for-profit hospice organization located in Hillsborough County, which provides comprehensive services, including hospice care for frail and elderly persons. This section also authorized the AHCA, in consultation with DOEA and subject to an appropriation, to approve up to 100 slots for the program.
- Section 14, chapter 2010-156, L.O.F., directed the AHCA to contract with a private health care organization to provide comprehensive services to frail and elderly persons residing in Polk, Highlands, Hardee, and Hillsborough Counties. This section also authorized 150 initial slots for the program.
- Section 15, chapter 2010-156, L.O.F., directed AHCA to contract for a new PACE site in Southwest Miami-Dade County and approved 50 initial slots for the program.
- Section 17, chapter 2011-61, L.O.F., directed AHCA to contract for a new PACE site in Palm Beach County and authorized up to 150 initial enrollee slots.
- Section 19, chapter 2012-33, L.O.F., directed AHCA to contract for new PACE sites in Broward County and in Manatee, Sarasota, and DeSoto counties; and approved up to 150 initial enrollees for each site, subject to a specific appropriation.

Section 430.707, F.S. governs contracts for long-term care services within community diversion pilot project areas and requires DOEA to contract with managed care organizations and other qualified providers for long-term care within community diversion pilot project areas. These long term-care

²¹ PACE benefits, Medicaid.gov, accessible at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Support/Integrating-Care/Program-of-All-Inclusive-Care-for-the-Elderly-PACE/PACE-Benefits.html>.

²² 42 CFR 460.60.

²³ *Id.*

²⁴ 42 CFR 460.80(b).

²⁵ 42 CFR 460.30.

²⁶ Agency for Health Care Administration analysis of HB 125, on file with Health Innovation Subcommittee staff. (3/9/13).

²⁷ Agency for Health Care Administration analysis of HB 125, on file with Health Innovation Subcommittee staff. (3/9/13).

²⁸ Agency for Health Care Administration analysis of HB 125, on file with Health Innovation Subcommittee staff. (3/9/13).

STORAGE NAME:

DATE:

providers can be PACE programs.²⁹ Health care service program requirements are specified in ch. 641, F.S. However, the PACE program is exempt from the program requirements of ch. 641, F.S. if the entity is a private, nonprofit, superior-rated nursing home, and if at least fifty percent of its residents are eligible for Medicaid.³⁰ The PACE centers which either were created or were expanded between 2009 and 2012 were exempt from requirements under 641 and s. 430.707, F.S.

The state is in the process of implementing the statutorily required Statewide Medicaid Managed Care Long-term Care Managed Care (SMMC LTC) program, which serves the PACE-eligible population, provides a similar set of Medicaid services as PACE, and which incorporates strong quality measurement and monitoring. PACE is a competing model to LTC SMMC in the delivery of long-term care services.³¹

Effect of the Bill

The bill creates two new PACE centers in Hernando and Pasco counties.

The bill requires the AHCA to contract with one not-for-profit organization to provide PACE services to frail elders who reside in Hernando and Pasco counties. The not-for-profit organization must have more than 30 years of experience as a licensed hospice and currently be licensed as a hospice serving individuals and families in Hernando and Pasco Counties.

The bill also requires AHCA to contract with one private health care organization. The health care organization, the sole member of which is a private, not-for-profit corporation that owns and manages health care organizations licensed in Hernando and Pasco counties which provide comprehensive services to frail elders who reside in those counties, including hospice and palliative care.

The bill requires AHCA, in consultation with DOEA, to approve up to 150 initial enrollees in each newly created PACE organization. This number of enrollees is consistent with the number approved in past legislation for new PACE providers, which varied from 50 to 150 slots for new enrollees.

Before either PACE center can operate, the center must be approved by AHCA. Since the bill allows two PACE centers in one area, the PACE centers must identify that there is a need and enough potential participants for each PACE provider to be viable and submit documentation to AHCA that will insure that neither provider will have to compete for the same recipients.

Normally, s. 430.707, F.S. governs contracts for long-term care services within community diversion pilot project areas. The bill exempts s. 430.707, F.S. from application to both the PACE providers. The bill also exempts the PACE providers from the requirements of health care service programs, which are specified in ch. 641, F.S. These exemptions are also consistent with the previous legislation to approve new PACE providers.

The bill is subject to federal approval of the applications to be a PACE site.

B. SECTION DIRECTORY:

- Section 1:** Creates an unnumbered section of law, relating to the Program of All-inclusive Care for the Elderly.
- Section 2:** Creates an unnumbered section of law, relating to the Program of All-inclusive Care for the Elderly.
- Section 3:** Provides for an effective date.

²⁹ S. 430.707, F.S.

³⁰ *Id.*

³¹ Agency for Health Care Administration analysis of HB 125, on file with Health Innovation Subcommittee staff. (3/9/13).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

AHCA estimates the fiscal impact to AHCA for administration of the PACE application process would be \$72,128 for Fiscal Year 2013-2014. The estimate includes salary for one FTE and human resource costs.³² The recurring impact is estimated to be \$67,135.³³ However, it is believed the workload can be handled within existing agency resources.

Funding for the new PACE centers is subject to an appropriation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

³² Agency for Health Care Administration analysis of HB 125, on file with Health Innovation Subcommittee staff. (3/9/13).

³³ Agency for Health Care Administration analysis of HB 125, on file with Health Innovation Subcommittee staff. (3/9/13).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Health Innovation Subcommittee adopted a strike-all amendment which removed all references to Citrus county from the bill.

29 this organization to serve frail elders who reside in Hernando
 30 and Pasco Counties.

31 Section 2. Notwithstanding s. 430.707, Florida Statutes,
 32 and subject to federal approval of the application to be a site
 33 for the Program of All-inclusive Care for the Elderly (PACE),
 34 the Agency for Health Care Administration shall contract with
 35 one private health care organization, the sole member of which
 36 is a private, not-for-profit corporation that owns and manages
 37 health care organizations licensed in Hernando and Pasco
 38 Counties that provide comprehensive services, including hospice
 39 and palliative care, to frail elders who reside in Hernando and
 40 Pasco Counties. The organization shall be exempt from the
 41 requirements of chapter 641, Florida Statutes. The agency, in
 42 consultation with the Department of Elderly Affairs and subject
 43 to an appropriation, shall approve up to 150 initial enrollees
 44 in the Program of All-inclusive Care for the Elderly established
 45 by this organization to serve frail elders who reside in
 46 Hernando and Pasco Counties.

47 Section 3. This act shall take effect July 1, 2013.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Health Care Appropriations Subcommittee

Representative Smith offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Notwithstanding s. 430.707, Florida Statutes, and subject to federal approval of the application to be a site for the Program of All-inclusive Care for the Elderly (PACE), the Agency for Health Care Administration shall contract with a not-for-profit organization that has been jointly formed by a lead agency that has been designated pursuant to s. 430.205, Florida Statutes, and that is licensed as a nursing home diversion program provider, and by a not-for-profit hospice provider that has been licensed for more than 30 years to serve individuals and families in Duval, St. Johns, Baker, and Nassau Counties. The not-for-profit organization shall leverage existing community-based care providers and healthcare organizations to provide PACE services to frail elders who reside in Duval, St. Johns, Baker, and Nassau Counties. The

Amendment No. 1

21 organization is exempt from the requirements of chapter 641,
22 Florida Statutes. The agency, in consultation with the
23 Department of Elderly Affairs, and subject to an appropriation,
24 shall approve up to 300 initial enrollees in the PACE
25 established by this organization to serve frail elders who
26 reside in Duval, St. Johns, Baker, and Nassau Counties.

27 Section 2. Notwithstanding s. 430.707, Florida Statutes,
28 and subject to federal approval of the application to be a site
29 for the Program of All-inclusive Care for the Elderly (PACE),
30 the Agency for Health Care Administration shall contract with
31 one not-for-profit corporation with more than 30 years'
32 experience as a licensed hospice provider and currently licensed
33 as a hospice provider to serve individuals and families in
34 Alachua and Clay counties. This not-for-profit corporation shall
35 provide PACE services to frail elders who reside in Alachua and
36 Clay counties. The organization shall be exempt from the
37 requirements of Chapter 641, Florida Statutes. The agency in
38 consultation with the Department of Elderly Affairs and subject
39 to an appropriation, shall approve up to 300 initial enrollees
40 in the Program of All-inclusive Care for the Elderly established
41 by this organization to serve frail elders who reside in Alachua
42 and Clay counties.

43 Section 3. Notwithstanding s. 430.707, Florida Statutes,
44 and subject to federal approval of the application to be a site
45 for the Program of All-inclusive Care for the Elderly (PACE),
46 the Agency for Health Care Administration shall contract with
47 one not-for-profit organization that has more than 25 years'
48 experience as a licensed hospice and is currently a licensed

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49 hospice serving individuals and families in Hernando and Pasco
 50 Counties. This not-for-profit organization shall provide PACE
 51 services to frail elders who reside in Hernando and Pasco
 52 Counties. The organization shall be exempt from the requirements
 53 of chapter 641, Florida Statutes. The agency, in consultation
 54 with the Department of Elderly Affairs and subject to an
 55 appropriation, shall approve up to 150 initial enrollees in the
 56 Program of All-inclusive Care for the Elderly established by
 57 this organization to serve frail elders who reside in Hernando
 58 and Pasco Counties.

59 Section 4. The Agency for Health Care Administration may
 60 not issue additional contracts for the Program of All-inclusive
 61 Care for the Elderly (PACE) projects until the statewide managed
 62 long-term care program is re-procured or October 1, 2018,
 63 whichever occurs first.

64 Section 5. Each Program of All-inclusive Care for the
 65 Elderly (PACE) project approved after July 1, 2013, is subject
 66 to the rate-setting and encounter data submission requirements
 67 of s. 409.983(3) and (4), Florida Statutes, and the enrollment
 68 requirements of s. 409.979, Florida Statutes, notwithstanding
 69 paragraph (1)(a) of that section.

70 Section 6. This act shall take effect July 1, 2013.

71

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T I T L E A M E N D M E N T

75

Remove everything before the enacting clause and insert:

76

A bill to be entitled

Amendment No. 1

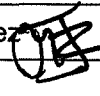
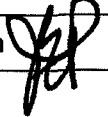
77 An act relating to the Program of All-inclusive Care
78 for the Elderly; requiring the Agency for Health Care
79 Administration to contract with a certain organization
80 to provide services under the federal Program of All-
81 inclusive Care for the Elderly in Duval, St. Johns,
82 Baker, and Nassau Counties; providing an exemption
83 from ch. 641, Florida Statutes, for the organization;
84 authorizing, subject to appropriation, enrollment
85 slots for the program in such counties; requiring the
86 Agency for Health Care Administration to contract with
87 a certain not-for-profit corporation to provide
88 services under the federal Program of All-inclusive
89 Care for the Elderly in Alachua and Clay counties;
90 providing an exemption from ch. 641, Florida Statutes,
91 for the corporation; authorizing, subject to
92 appropriation, enrollment slots for the program in
93 such counties; authorizing the Agency for Health Care
94 Administration to contract with a certain organization
95 to provide services under the federal Program of All-
96 inclusive Care for the Elderly in Hernando and Pasco
97 counties; providing an exemption from ch. 641, F.S.,
98 for the organization; authorizing, subject to
99 appropriation, enrollment slots for the program in
100 such counties; prohibiting the Agency for Health Care
101 Administration from issuing additional Program of All-
102 inclusive Care for the Elderly contracts under certain
103 circumstances; requiring Program of All-inclusive Care
104 for the Elderly projects approved after a specified

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105 | date to be subject to certain rate-setting and
106 | encounter data submission requirements; providing an
107 | effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 817 Health Care Providers
SPONSOR(S): Gaetz
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N	Holt	O'Callaghan
2) Health Care Appropriations Subcommittee		Rodriguez 	Pridgeon 
3) Health & Human Services Committee			

SUMMARY ANALYSIS

This bill creates section 456.0125, F.S., establishing the Standardized Credentials Collection and Verification Program (program) within the Department of Health (DOH).

The bill contains the legislative intent for establishing the program and for designating an entity to act as a repository for the core credentials data of health care practitioners. DOH is required to contract with one designated credentials collections and verification entity (CCVE) to implement the program and ensure that core credentials data is collected only once unless a correction, update, or modification to the data is required. Additionally, the bill provides that DOH, health care entities, and health care practitioners must work cooperatively to ensure the integrity and accuracy of the program.

Participation in the program is mandatory for health care practitioners; insurance companies operating in accordance with chapter 624, F.S., that offer health insurance coverage under part VI of chapter 627, F.S.; health management organizations as defined in s. 641.19, F.S.; or any entity licensed under chapter 395, F.S. The bill provides for specific reporting requirements by health care practitioners to the CCVE and provides for disciplinary action for failure to meet those reporting requirements. The bill prohibits a health care entity from requesting core credentials data directly from the health care practitioner.

The bill defines the following terms: "accredited" or "certified," "core credentials data," "credential" or "credentialing," "credentials collection and verification entity," "health care entity," "health care practitioner," "national accrediting organization," "primary source verification," "professional training," and "specialty board certification."

The bill provides DOH rulemaking authority to implement the provisions of the bill.

The bill has an indeterminate and significant fiscal impact to the Medical Quality Assurance Trust Fund within DOH.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Standardized Credentials Collection and Verification

Currently, the Division of Medical Quality Assurance (MQA) within the Department of Health (DOH) licenses and regulates medical doctors pursuant to ch. 458, F.S., and osteopathic physicians pursuant to ch. 459, F.S. Proof of state licensure as a physician is one of several credentials health care entities evaluate when deciding whether to grant staff appointments, reappointments, clinical privileges, etc., or enter into other contractual relationships with physicians. Currently, MQA verifies licensure and disciplinary history, but does not credential physicians.

Section 456.077, F.S., provides that citations may be issued when authorized by rule of the board¹ or the DOH. Rules are promulgated by the board or DOH through the rulemaking process to identify violations that may be resolved by citation, including fines or other penalties to be imposed.

CoreSTAT

In 1998, a credentialing collection and verification program, which became known as the CoreSTAT, was created by legislative mandate to standardize the process for health care practitioners regulated by MQA.² However, on July 1, 2002, the legislative mandate was repealed and health care practitioners were no longer required to report core credentials data to DOH.³ By November 30, 2003, CoreSTAT was disabled and subscribers were no longer able to access the collected practitioner data.⁴

The CoreSTAT program was developed in-house within the MQA Division and a work unit was established to manage the program. The credentialing process initially included medical doctors, osteopathic physicians, chiropractic physicians, and podiatric physicians, and allowed for the addition of other health care practitioners. However, in 1999, CoreSTAT was expanded to include all health care practitioners and required DOH to charge a fee to access the core credentials data.⁵ Additionally, a thirteen-member Credentials Verification Advisory Council was created to assist with the development of guidelines for establishment of the standardized credentials verification program. In 2000, the Credentials Verification Advisory Council was repealed.⁶

Contracted vendors were also solicited to implement the statutory requirements of the CoreSTAT program. Over the four years it operated, the total cost of the CoreSTAT program was \$14,712,566 and the total revenues collected for the program were \$173,815. The CoreSTAT program was funded by the MQA Trust Fund.⁷ Difficulty with implementing the system is believed to have been the reason for repeal.⁸

¹ "Board" is defined in s. 456.001(1), F.S.

² Chapter 98-226, L.O.F.

³ Department of Health, Changes to CoreSTAT, available at: <http://www.doh.state.fl.us/mqa/corestat/index.htm>, (last visited on Mar. 14, 2013).

⁴ *Id.*

⁵ Chapter 99-397, L.O.F.

⁶ Chapters 2000-318 and 2000-153, L.O.F.

⁷ Department of Health bill analysis for amendment 373656 for SB 966, dated March 13, 2013, on file with the House Health Quality Subcommittee staff.

⁸ *Id.*

Credential Verification Entities in Florida

Currently, there are several credentialing entities utilized by health care facilities operating in Florida.

Reprax

Reprax is a web driven software service that aids in the credentialing and monitoring of sales/service representatives in healthcare environments. It allows hospitals to enforce their policies throughout their vendor community, and for vendors to maintain compliance with those policies. Reprax has over 6,500 vendor companies. Reprax does 100% of the document management.⁹ Currently, there are 107 hospitals using Reprax in Florida.¹⁰

Vendor Credentialing Service

Vendor Credentialing Service (VCS) is a third party credentialing provider. VCS is a web-based credentialing and compliance management program. The program credentials representatives and suppliers. The program can be deployed in a few hours and it is available to all hospitals at no cost. The VCS program is used by leading healthcare institutions nationwide. VCS partners include Group Purchasing Organizations (GPOs), multi-hospital systems, 1000+ bed hospitals, surgery centers, physician offices and offsite medical offices. Additionally, the VCS program is supported by suppliers nationwide and currently credentials thousands of suppliers and representatives.¹¹ Currently, there are 15 hospitals using VCS in Florida.¹²

Vendormate

Vendormate links healthcare providers and suppliers to improve the decision making process related to the selection of business partners and employees. Vendormate leverages its vendor credentialing network to deliver software-as-a-service (SaaS) applications that give buyers and sellers increased transparency and information control as a foundation for collaborative and strategic relationships. Vendormate: manages vendor access and influence permissions, monitors sanction and financial details, and credentials all levels including entities, directors, and representatives.¹³ Currently, there are 30 hospitals using Vendormate in Florida.¹⁴

Effects of Proposed Changes

The bill creates a new section of law within ch. 456, F.S., which contains the core licensure provisions for health care practitioners regulated by DOH. The bill requires DOH to implement and administer the Standardized Credentials Collection and Verification Program (program). The bill specifically requires DOH to contract with an entity to act as a repository for the core licensure data of health care practitioners and ensure that the information collected by an entity is requested only once of a health care practitioner. The bill defines the "credentials collection and verification entity (CCVE)" to be an organization controlled by a statewide association of Florida licensed physicians that has been in existence since July 1, 2003.

The bill defines "health care practitioner" to mean any person licensed under: ch. 457, F.S., (acupuncture); ch. 458, F.S., (medicine); ch. 459, F.S., (osteopathic medicine); ch. 460, F.S., (chiropractic medicine); ch. 461, F.S., (podiatric medicine); ch. 462, F.S., (naturopathic medicine); ch. 463, F.S., (optometry); ch. 464, F.S., (nursing); ch. 465, F.S., (pharmacy); ch. 466, F.S., (dentistry and

⁹ Reprax, About Reprax, available at: <https://www.reprax.com/> (last viewed March 25, 2013).

¹⁰ Hospital Vendor Credentialing, A directory, available at:

<http://www.hospitalvendorcredentialing.com/state/stateList.cgi?state=Florida> (last viewed March 25, 2013).

¹¹ Vendor Credentialing Service, About Us, available at: <http://www.vcsdatabase.com/index.php> (last viewed March 25, 2013).

¹² *Supra* fn 10.

¹³ Vendormate, Company: Overview, available at: http://vendormate.com/company_oview.html (last viewed March 25, 2013).

¹⁴ *Supra* fn 10.

dental hygiene); ch. 467, F.S., (midwifery); parts I, II, III, V, X, XIII, and XIV of ch. 468, F.S., (speech-language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, and orthotics, prosthetics, and pedorthics); ch. 478, F.S., (electrology or electrolysis); ch. 480, F.S., (massage therapy); parts III and IV of ch. 483, F.S., (clinical laboratory personnel or medical physics); ch. 484, F.S., (opticianry and hearing aid specialists); ch. 486, F.S., (physical therapy); ch. 490, F.S., (psychology); and ch. 491, F.S. (psychotherapy).¹⁵

The bill requires a health care practitioner to report all core credentials data to the CCVE and notify the CCVE within 45 days after any correction, update, or modification is made to any core credentials data. Core credentials data is defined to include the following verified primary source documents: professional education, professional training, licensure, current Drug Enforcement Administration certification, specialty board certification, Educational Commission for Foreign Medical Graduates certification, and any final report of disciplinary action. If a licensee or a person applying for initial licensure fails to report and update information to the CCVE, DOH may: refuse to issue a license, or issue a citation and assess a fine pursuant to s. 456.077, F.S. Section 456.077, F.S., grants the board, or DOH if there is no board, the authority to adopt rules to permit the issuance of citations.

The bill specifies that the following must participate in the program: a health care practitioner, an insurance company operating under the Florida Insurance Code that offers health insurance coverage under part VI of ch. 627, F.S., a health maintenance organization (HMO), a hospital, an ambulatory surgical center, or a mobile surgical facility. Moreover, the bill defines "health care entity," to include:

- a health care facility licensed by ch. 395, F.S., which includes a hospital, ambulatory surgical center, or mobile surgical facility;
- an accredited medical school in the state; or
- an entity licensed by the Department of Insurance as a:
 - prepaid health plan;
 - HMO; or
 - An insurer that provides coverage for health care services through a network of health care providers or similar organizations licensed under chapters 627 (Insurance Rates and Contracts), 636 (Prepaid Limited and Discount Medical Plans), 641 (Health Care Service Programs) or 651 (Continuing Care Contracts).

The bill provides that a health care entity must use the CCVE to obtain core credentials data, to include corrections, updates, and modifications to the data, about any health care practitioner who may be considered for or renewing their membership, privileges, or participation with any plan or program operated by a health care entity. The bill provides that a health care entity may not request core credential data from the health care practitioner. The effect of the aforementioned prohibition is unclear, since the DOH has no legal oversight of a health care entity as defined by the bill.

The bill defines the following terms: "accredited" or "certified," "core credentials data," "credential" or "credentialing," "credentials collection and verification entity," "health care entity," "health care practitioner," "national accrediting organization," "primary source verification," "professional training," and "specialty board certification."

The bill provides the DOH with the necessary authority to adopt rules to develop and implement the program.

B. SECTION DIRECTORY:

Section 1. Creates s. 456.0125, F.S., relating to Standardized Credentials Collection and Verification program for health care providers.

Section 2. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill creates a ground for disciplinary action for licensed health care practitioners. Based on current practices, fines assessed through citations would be deposited in the Medical Quality Assurance Trust Fund. The amount of potential revenues from fines that may be collected is unknown.

2. Expenditures:

The fiscal impact is indeterminate and significant related to the cost of the contract with the CCVE and department resources necessary to implement and administer the program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care entities and health care practitioners would be required to participate in the CCVE program. The fiscal impact on the private sector is indeterminate and significant.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county of municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides DOH with sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 71 of the bill, the reference to the "Department of Insurance" is outdated, and should be changed to reflect the proper reference to the "Office of Insurance Regulation."

On line 111 of the bill, the bill references the term "licensee," which is undefined in the newly created section of law. However, this term is defined in s. 456.001(6), F.S., to mean any person or entity issued a permit, registration, certificate, or license, including a provisional license by DOH. The bill defines the term "health care practitioner" pursuant to s. 456.001(4), F.S., which is narrower in scope than the

definition of "licensee." It is unclear if the intent is to capture the entire population of individuals who receive a license issued by DOH or just licensed health care practitioners.

Line 112 of the bill states that the licensee or person must "report" and "update information," but does not specify to whom the licensee must report or what information is to be updated. It may be more appropriate to utilize the defined terms of the bill to require reporting to the "CCVE" and update "core credentials data."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to health care providers; creating s.
 3 456.0125, F.S.; providing legislative intent;
 4 providing definitions; creating the Standardized
 5 Credentials Collection and Verification program for
 6 health care providers; providing procedures and
 7 requirements with respect to the program; authorizing
 8 the Department of Health to adopt rules to develop and
 9 implement the program; providing an effective date.

10
 11 WHEREAS, the Legislature recognizes that an efficient and
 12 effective health care practitioner credentialing program helps
 13 ensure access to quality health care and the demand for health
 14 care practitioner credentialing activities has increased as a
 15 result of health care reform and recent changes affecting the
 16 delivery of and reimbursement for health care, and

17 WHEREAS, the resulting duplication of health care
 18 practitioner credentialing activities is costly and cumbersome
 19 for both the practitioner and the entity granting practice
 20 privileges, NOW, THEREFORE,

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 456.0125, Florida Statutes, is created
 25 to read:

26 456.0125 Standardized Credentials Collection and
 27 Verification Program for health care providers.-

28 (1) It is the intent of the Legislature to establish the

29 Standardized Credentials Collection and Verification program and
 30 designate an entity to act as a repository for the core
 31 credentials data of health care practitioners and ensure that
 32 this information is collected only once unless a correction,
 33 update, or modification to the data is required. The Legislature
 34 further intends that the credentials collection and verification
 35 entity, the department, and health care practitioners work
 36 cooperatively to ensure the integrity and accuracy of the
 37 program. A health care practitioner as defined in s. 456.001(4),
 38 an insurance company operating in accordance with chapter 624
 39 that offers health insurance coverage under part VI of chapter
 40 627, a health maintenance organization as defined in s.
 41 641.19(12), or an entity licensed under chapter 395 must
 42 participate in the program.

43 (2) As used in this section, the term:

44 (a) "Accredited" or "certified" means approved by a
 45 national accrediting organization as defined in paragraph (g),
 46 or other nationally recognized and accepted organization
 47 authorized by the department to assess and certify a credentials
 48 collection and verification program, or another entity or
 49 organization that verifies the credentials of a health care
 50 practitioner.

51 (b) "Core credentials data" means data that is verified by
 52 a primary source as described in paragraph (h) and includes
 53 professional education, professional training, licensure,
 54 current Drug Enforcement Administration certification, specialty
 55 board certification, Educational Commission for Foreign Medical
 56 Graduates certification, and final disciplinary action reported

57 pursuant to s. 456.039(1)(a)8. or s. 456.0391(1)(a)8.

58 (c) "Credential" or "credentialing" means the process by
 59 which the qualifications of a licensed health care practitioner
 60 or an applicant for licensure as a health care provider are
 61 assessed and verified.

62 (d) "Credentials collection and verification entity" or
 63 "CCVE" means an organization controlled by a statewide
 64 association of physicians licensed pursuant to chapter 458 or
 65 chapter 459 that has been in existence since July 1, 2003, and
 66 was selected by the department to collect and store
 67 credentialing data, documents, and information.

68 (e) "Health care entity" means:

69 1. A health care facility licensed pursuant to chapter
 70 395;

71 2. An entity licensed by the Department of Insurance as a
 72 prepaid health care plan, a health maintenance organization, or
 73 an insurer that provides coverage for health care services
 74 through a network of health care providers or similar
 75 organizations licensed under chapter 627, chapter 636, chapter
 76 641, or chapter 651; or

77 3. An accredited medical school in the state.

78 (f) "Health care practitioner" means a person licensed or,
 79 for credentialing purposes only, a person applying for licensure
 80 as a health care practitioner as defined in s. 456.001(4).

81 (g) "National accrediting organization" means an
 82 organization that awards accreditation or certification to
 83 hospitals, managed care organizations, credentials collection
 84 and verification entities, or other health care entities,

85 including, but not limited to, the Joint Commission, the
 86 American Accreditation HealthCare Commission (URAC), and the
 87 National Committee for Quality Assurance (NCQA).

88 (h) "Primary source verification" means verification of
 89 professional qualifications based on evidence obtained directly
 90 from the issuing source of the applicable qualification, any
 91 other source deemed as a primary source for verification by the
 92 department, or an accrediting organization as defined in
 93 paragraph (g) approved by the department.

94 (i) "Professional training" means any internship,
 95 residency, or fellowship related to the profession for which the
 96 health care practitioner is licensed or seeking licensure.

97 (j) "Specialty board certification" means certification in
 98 a specialty issued by a specialty board that is recognized by a
 99 board as defined in s. 456.001(1) and that regulates the
 100 profession for which the health care practitioner is licensed or
 101 seeking licensure.

102 (3) The Standardized Credentials Collection and
 103 Verification program is established and shall be administered by
 104 the department, as follows:

105 (a) Each health care practitioner shall report all core
 106 credentials data to the CCVE and notify the CCVE within 45 days
 107 after any corrections, updates, or modifications are made to the
 108 core credentials data. Failure to report and update information
 109 as required under this paragraph constitutes a ground for
 110 disciplinary action under the respective licensing chapter and
 111 s. 456.072(1)(k). If a licensee or person applying for initial
 112 licensure fails to report and update information as required

113 under this paragraph, the department or board, as appropriate,
 114 may:

115 1. For a person applying for initial licensure, refuse to
 116 issue a license.

117 2. For a licensee, issue a citation pursuant to s. 456.077
 118 and assess a fine, as determined by rule by the board or
 119 department.

120 (b) The department:

121 1. Shall contract with one CCVE to collect and store
 122 credentialing data, documents, and information. When authorized
 123 by a health care practitioner, the department shall furnish such
 124 data, documents, and information to a designated health care
 125 entity. The CCVE must be fully accredited or certified by a
 126 national accrediting organization. If a CCVE fails to maintain
 127 full accreditation or certification or provide data authorized
 128 by a health care practitioner, the department may terminate the
 129 contract with the CCVE.

130 2. Shall require the CCVE to maintain liability insurance
 131 sufficient to meet the certification or accreditation
 132 requirements established under this section.

133 3. Shall develop standardized forms on which a health care
 134 practitioner may initially report and authorize the release of
 135 core credentials data and subsequently report corrections,
 136 updates, and modifications to that data.

137 4. May designate by rule additional elements of the core
 138 credentials data required under this section.

139 (c) The CCVE shall:

140 1. Maintain a complete current file of applicable core

141 | credentials data on each health care practitioner.

142 | 2. If authorized by the health care practitioner, release
 143 | the core credentials data and any corrections, updates, and
 144 | modifications to the data that are otherwise confidential or
 145 | exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
 146 | of the State Constitution to a health care entity.

147 | (d) A health care entity:

148 | 1. Shall use the CCVE to obtain core credentials data,
 149 | including corrections, updates, and modifications to the data,
 150 | about any health care practitioner considered for or renewing
 151 | membership in, privileges with, or participation in any plan or
 152 | program with the health care entity.

153 | 2. May not request core credentials data from the health
 154 | care practitioner.

155 | (4) This section may not restrict the authority of a
 156 | health care entity to credential, approve, or deny an
 157 | application for hospital staff membership, clinical privileges,
 158 | or participation in a managed care network.

159 | (5) A health care entity may rely upon any data that has
 160 | been verified by the CCVE to meet the primary source
 161 | verification requirements of a national accrediting
 162 | organization.

163 | (6) The department shall adopt rules necessary to develop
 164 | and implement the program established under this section.

165 | Section 2. This act shall take effect July 1, 2013.

Amendment No. strike all

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health Care Appropriations
 2 Subcommittee

3 Representative Gaetz offered the following:

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

6 Remove everything after the enacting clause and insert:

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

8 Section 1. An act relating to health care.--

9 (1) The Department of Health shall convene a study group
 10 to evaluate the need for a statewide primary source verification
 11 repository for the core credentials data of health
 12 practitioners.

13 (2) The study group shall perform an assessment to
 14 evaluate the need for a statewide primary source verification
 15 repository for the core credentials data of health
 16 practitioners. The assessment shall address factors including,
 17 but not limited to, potential costs, timelines for
 18 implementation, procurement options, and the impact on the
 19 private sector. The study group shall submit recommendations to

20 Amendment No. strike all
 21 the Governor, the President of the Senate, and the Speaker of
 22 the House of Representatives by July 1, 2014.

23 Section 2. This act shall take effect July 1, 2013.

24
 25

26 **T I T L E A M E N D M E N T**

27 Remove everything before the enacting clause and insert:

28 A bill to be entitled

29 An act relating to health care; requiring the Department of
 30 Health to convene a study group to evaluate the need for a
 31 statewide repository for the core credentials data of health
 32 practitioners; providing requirements for the study group;
 33 requiring the study group to submit recommendations to the
 34 Governor and Legislature; providing an effective date.

35

36 WHEREAS, the Legislature recognizes that an efficient and
 37 effective health care practitioner credentialing program helps
 38 ensure access to quality health care and the demand for health
 39 care practitioner credentialing activities has increased as a
 40 result of health care reform and recent changes affecting the
 41 delivery of and reimbursement for health care, and

42 WHEREAS, the resulting duplication of health care
 43 practitioner credentialing activities is costly and cumbersome
 44 for both the practitioner and the entity granting practice
 45 privileges, NOW, THEREFORE,

46