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1 A bill to be entitled
2 An act relating to health and human services; repealing s.
3 394.4595, F.S., relating to access to patients and their
4 records by Florida statewide and local advocacy councils;
5 repealing s. 402.164, F.S., relating to legislative intent
6 and definitions applicable to advocacy councils; repealing
7 s. 402.165, F.S., relating to the establishment of the
8 Florida Statewide Advocacy Council; repealing s. 402.166,
9 F.S., relating to the establishment of the Florida local
10 advocacy councils; repealing s. 402.167, F.S., relating to
11 the duties of state agencies that provide client services
12 relating to the Florida Statewide Advocacy Council and the
13 Florida local advocacy councils; amending s. 408.036,
14 F.S.; eliminating an annual report submitted to the
15 Legislature by the Agency for Health Care Administration;
16 repealing s. 408.18, F.S., relating to the Health Care
17 Community Antitrust Guidance Act; repealing s. 408.185,
18 F.S., relating to confidentiality of information submitted
19 for review of antitrust issues; amending ss. 39.001,
20 39.0011, 39.202, 39.302, 394.459, 394.4597, 394.4598,
21 394.4599, 394.4615, 400.0065, 400.141, 415.1034, 415.104,
22 415.1055, 415.106, 415.107, 429.19, 429.28, and 429.34,
23 F.S.; conforming references; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Sections 394.4595, 402.164, 402.165, 402.166,
28 402.167, 408.18, and 408.185, Florida Statutes, are repealed.

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29 Section 2. Paragraph (a) of subsection (8) of section
30 39.001, Florida Statutes, is amended to read:

31 39.001 Purposes and intent; personnel standards and
32 screening.—

33 (8) PLAN FOR COMPREHENSIVE APPROACH.—

34 (a) The office shall develop a state plan for the
35 promotion of adoption, support of adoptive families, and
36 prevention of abuse, abandonment, and neglect of children and
37 shall submit the state plan to the Speaker of the House of
38 Representatives, the President of the Senate, and the Governor
39 no later than December 31, 2008. The Department of Children and
40 Family Services, the Department of Corrections, the Department
41 of Education, the Department of Health, the Department of
42 Juvenile Justice, the Department of Law Enforcement, the Agency
43 for Persons with Disabilities, and the Agency for Workforce
44 Innovation shall participate and fully cooperate in the
45 development of the state plan at both the state and local
46 levels. Furthermore, appropriate local agencies and
47 organizations shall be provided an opportunity to participate in
48 the development of the state plan at the local level.
49 Appropriate local groups and organizations shall include, but
50 not be limited to, community mental health centers; guardian ad
51 litem programs for children under the circuit court; the school
52 boards of the local school districts; ~~the Florida local advocacy~~
53 ~~councils~~; community-based care lead agencies; private or public
54 organizations or programs with recognized expertise in working
55 with child abuse prevention programs for children and families;
56 private or public organizations or programs with recognized

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57 expertise in working with children who are sexually abused,
58 physically abused, emotionally abused, abandoned, or neglected
59 and with expertise in working with the families of such
60 children; private or public programs or organizations with
61 expertise in maternal and infant health care; multidisciplinary
62 child protection teams; child day care centers; law enforcement
63 agencies; and the circuit courts, when guardian ad litem
64 programs are not available in the local area. The state plan to
65 be provided to the Legislature and the Governor shall include,
66 as a minimum, the information required of the various groups in
67 paragraph (b).

68 Section 3. Subsection (2) of section 39.0011, Florida
69 Statutes, is amended to read:

70 39.0011 Direct-support organization.—

71 (2) The number of members on the board of directors of the
72 direct-support organization shall be determined by the Chief
73 Child Advocate. Membership on the board of directors of the
74 direct-support organization shall include, but not be limited
75 to, a guardian ad litem; ~~a member of a local advocacy council;~~ a
76 representative from a community-based care lead agency; a
77 representative from a private or public organization or program
78 with recognized expertise in working with child abuse prevention
79 programs for children and families; a representative of a
80 private or public organization or program with recognized
81 expertise in working with children who are sexually abused,
82 physically abused, emotionally abused, abandoned, or neglected
83 and with expertise in working with the families of such
84 children; an individual working at a state adoption agency; and

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85 the parent of a child adopted from within the child welfare
86 system.

87 Section 4. Paragraph (k) of subsection (2) of section
88 39.202, Florida Statutes, is amended to read:

89 39.202 Confidentiality of reports and records in cases of
90 child abuse or neglect.—

91 (2) Except as provided in subsection (4), access to such
92 records, excluding the name of the reporter which shall be
93 released only as provided in subsection (5), shall be granted
94 only to the following persons, officials, and agencies:

95 (k) ~~Any appropriate official of a Florida advocacy council~~
96 ~~investigating a report of known or suspected child abuse,~~
97 ~~abandonment, or neglect;~~ The Auditor General or the Office of
98 Program Policy Analysis and Government Accountability for the
99 purpose of conducting audits or examinations pursuant to law, or
100 the guardian ad litem for the child.

101 Section 5. Subsections (5) through (7) of section 39.302,
102 Florida Statutes, are renumbered as subsections (4) through (6),
103 respectively, and present subsection (4) of that section is
104 amended to read:

105 39.302 Protective investigations of institutional child
106 abuse, abandonment, or neglect.—

107 ~~(4) The department shall notify the Florida local advocacy~~
108 ~~council in the appropriate district of the department as to~~
109 ~~every report of institutional child abuse, abandonment, or~~
110 ~~neglect in the district in which a client of the department is~~
111 ~~alleged or shown to have been abused, abandoned, or neglected,~~
112 ~~which notification shall be made within 48 hours after the~~

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~~department commences its investigation.~~

Section 6. Paragraph (c) of subsection (5) and subsection (12) of section 394.459, Florida Statutes, are amended to read:
394.459 Rights of patients.—

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

(c) Each facility must permit immediate access to any patient, subject to the patient's right to deny or withdraw consent at any time, by the patient's family members, guardian, guardian advocate, representative, ~~Florida statewide or local advocacy council~~, or attorney, unless such access would be detrimental to the patient. If a patient's right to communicate or to receive visitors is restricted by the facility, written notice of such restriction and the reasons for the restriction shall be served on the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative; and such restriction shall be recorded on the patient's clinical record with the reasons therefor. The restriction of a patient's right to communicate or to receive visitors shall be reviewed at least every 7 days. The right to communicate or receive visitors shall not be restricted as a means of punishment. Nothing in this paragraph shall be construed to limit the provisions of paragraph (d).

(12) POSTING OF NOTICE OF RIGHTS OF PATIENTS.—Each facility shall post a notice listing and describing, in the language and terminology that the persons to whom the notice is addressed can understand, the rights provided in this section. This notice shall include a statement that provisions of the federal Americans with Disabilities Act apply and the name and

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141 telephone number of a person to contact for further information.
142 This notice shall be posted in a place readily accessible to
143 patients and in a format easily seen by patients. This notice
144 shall include the telephone number ~~numbers~~ of the ~~Florida local~~
145 ~~advocacy council and~~ Advocacy Center for Persons with
146 Disabilities, Inc.

147 Section 7. Paragraph (d) of subsection (2) of section
148 394.4597, Florida Statutes, is amended to read:

149 394.4597 Persons to be notified; patient's
150 representative.—

151 (2) INVOLUNTARY PATIENTS.—

152 (d) When the receiving or treatment facility selects a
153 representative, first preference shall be given to a health care
154 surrogate, if one has been previously selected by the patient.
155 If the patient has not previously selected a health care
156 surrogate, the selection, except for good cause documented in
157 the patient's clinical record, shall be made from the following
158 list in the order of listing:

- 159 1. The patient's spouse.
- 160 2. An adult child of the patient.
- 161 3. A parent of the patient.
- 162 4. The adult next of kin of the patient.
- 163 5. An adult friend of the patient.

164 ~~6. The appropriate Florida local advocacy council as~~
165 ~~provided in s. 402.166.~~

166 Section 8. Subsection (1) of section 394.4598, Florida
167 Statutes, is amended to read:

168 394.4598 Guardian advocate.—

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(1) The administrator may petition the court for the appointment of a guardian advocate based upon the opinion of a psychiatrist that the patient is incompetent to consent to treatment. If the court finds that a patient is incompetent to consent to treatment and has not been adjudicated incapacitated and a guardian with the authority to consent to mental health treatment appointed, it shall appoint a guardian advocate. The patient has the right to have an attorney represent him or her at the hearing. If the person is indigent, the court shall appoint the office of the public defender to represent him or her at the hearing. The patient has the right to testify, cross-examine witnesses, and present witnesses. The proceeding shall be recorded either electronically or stenographically, and testimony shall be provided under oath. One of the professionals authorized to give an opinion in support of a petition for involuntary placement, as described in s. 394.4655 or s. 394.467, must testify. A guardian advocate must meet the qualifications of a guardian contained in part IV of chapter 744, except that a professional referred to in this part, an employee of the facility providing direct services to the patient under this part, a departmental employee, or a facility administrator, ~~or member of the Florida local advocacy council~~ shall not be appointed. A person who is appointed as a guardian advocate must agree to the appointment.

Section 9. Paragraph (b) of subsection (2) of section 394.4599, Florida Statutes, is amended to read:

394.4599 Notice.—

(2) INVOLUNTARY PATIENTS.—

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197 (b) A receiving facility shall give prompt notice of the
198 whereabouts of a patient who is being involuntarily held for
199 examination, by telephone or in person within 24 hours after the
200 patient's arrival at the facility, unless the patient requests
201 that no notification be made. Contact attempts shall be
202 documented in the patient's clinical record and shall begin as
203 soon as reasonably possible after the patient's arrival. ~~Notice~~
204 ~~that a patient is being admitted as an involuntary patient shall~~
205 ~~be given to the Florida local advocacy council no later than the~~
206 ~~next working day after the patient is admitted.~~

207 Section 10. Subsection (5) of section 394.4615, Florida
208 Statutes, is amended to read:

209 394.4615 Clinical records; confidentiality.—

210 (5) Information from clinical records may be used by the
211 Agency for Health Care Administration and, the department, ~~and~~
212 ~~the Florida advocacy councils~~ for the purpose of monitoring
213 facility activity and complaints concerning facilities.

214 Section 11. Paragraphs (h) and (i) of subsection (2) of
215 section 400.0065, Florida Statutes, are redesignated as
216 paragraphs (g) and (h), respectively, and present paragraph (g)
217 of that subsection is amended to read:

218 400.0065 State Long-Term Care Ombudsman; duties and
219 responsibilities.—

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

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

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225 Section 12. Paragraph (m) of subsection (1) of section
226 400.141, Florida Statutes, is amended to read:

227 400.141 Administration and management of nursing home
228 facilities.—

229 (1) Every licensed facility shall comply with all
230 applicable standards and rules of the agency and shall:

231 (m) Publicly display a poster provided by the agency
232 containing the names, addresses, and telephone numbers for the
233 state's abuse hotline, the State Long-Term Care Ombudsman, the
234 Agency for Health Care Administration consumer hotline, the
235 Advocacy Center for Persons with Disabilities, ~~the Florida~~
236 ~~Statewide Advocacy Council~~, and the Medicaid Fraud Control Unit,
237 with a clear description of the assistance to be expected from
238 each.

239 Section 13. Paragraph (m) of subsection (3) of section
240 408.036, Florida Statutes, is amended to read:

241 408.036 Projects subject to review; exemptions.—

242 (3) EXEMPTIONS.—Upon request, the following projects are
243 subject to exemption from the provisions of subsection (1):

244 (m)1. For the provision of adult open-heart services in a
245 hospital located within the boundaries of a health service
246 planning district, as defined in s. 408.032(5), which has
247 experienced an annual net out-migration of at least 600 open-
248 heart-surgery cases for 3 consecutive years according to the
249 most recent data reported to the agency, and the district's
250 population per licensed and operational open-heart programs
251 exceeds the state average of population per licensed and
252 operational open-heart programs by at least 25 percent. All

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253 hospitals within a health service planning district which meet
254 the criteria reference in sub-subparagraphs 2.a.-h. shall be
255 eligible for this exemption on July 1, 2004, and shall receive
256 the exemption upon filing for it and subject to the following:

257 a. A hospital that has received a notice of intent to
258 grant a certificate of need or a final order of the agency
259 granting a certificate of need for the establishment of an open-
260 heart-surgery program is entitled to receive a letter of
261 exemption for the establishment of an adult open-heart-surgery
262 program upon filing a request for exemption and complying with
263 the criteria enumerated in sub-subparagraphs 2.a.-h., and is
264 entitled to immediately commence operation of the program.

265 b. An otherwise eligible hospital that has not received a
266 notice of intent to grant a certificate of need or a final order
267 of the agency granting a certificate of need for the
268 establishment of an open-heart-surgery program is entitled to
269 immediately receive a letter of exemption for the establishment
270 of an adult open-heart-surgery program upon filing a request for
271 exemption and complying with the criteria enumerated in sub-
272 subparagraphs 2.a.-h., but is not entitled to commence operation
273 of its program until December 31, 2006.

274 2. A hospital shall be exempt from the certificate-of-need
275 review for the establishment of an open-heart-surgery program
276 when the application for exemption submitted under this
277 paragraph complies with the following criteria:

278 a. The applicant must certify that it will meet and
279 continuously maintain the minimum licensure requirements adopted
280 by the agency governing adult open-heart programs, including the

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most current guidelines of the American College of Cardiology and American Heart Association Guidelines for Adult Open Heart Programs.

b. The applicant must certify that it will maintain sufficient appropriate equipment and health personnel to ensure quality and safety.

c. The applicant must certify that it will maintain appropriate times of operation and protocols to ensure availability and appropriate referrals in the event of emergencies.

d. The applicant can demonstrate that it has discharged at least 300 inpatients with a principal diagnosis of ischemic heart disease for the most recent 12-month period as reported to the agency.

e. The applicant is a general acute care hospital that is in operation for 3 years or more.

f. The applicant is performing more than 300 diagnostic cardiac catheterization procedures per year, combined inpatient and outpatient.

g. The applicant's payor mix at a minimum reflects the community average for Medicaid, charity care, and self-pay patients or the applicant must certify that it will provide a minimum of 5 percent of Medicaid, charity care, and self-pay to open-heart-surgery patients.

h. If the applicant fails to meet the established criteria for open-heart programs or fails to reach 300 surgeries per year by the end of its third year of operation, it must show cause why its exemption should not be revoked.

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~~3. By December 31, 2004, and annually thereafter, the agency shall submit a report to the Legislature providing information concerning the number of requests for exemption it has received under this paragraph during the calendar year and the number of exemptions it has granted or denied during the calendar year.~~

Section 14. Paragraph (a) of subsection (1) of section 415.1034, Florida Statutes, is amended to read:

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

(1) MANDATORY REPORTING.—

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

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

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

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

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

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

6. An employee of the Department of Business and Professional Regulation conducting inspections of public lodging

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establishments under s. 509.032; or

~~7. Florida advocacy council member or long-term care
ombudsman council member; or~~

~~7.8.~~ Bank, savings and loan, or credit union officer,
trustee, or employee,

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

Section 15. Subsection (1) of section 415.104, Florida
Statutes, is amended to read:

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

(1) The department shall, upon receipt of a report
alleging abuse, neglect, or exploitation of a vulnerable adult,
begin within 24 hours a protective investigation of the facts
alleged therein. If a caregiver refuses to allow the department
to begin a protective investigation or interferes with the
conduct of such an investigation, the appropriate law
enforcement agency shall be contacted for assistance. If, during
the course of the investigation, the department has reason to
believe that the abuse, neglect, or exploitation is perpetrated
by a second party, the appropriate law enforcement agency and
state attorney shall be orally notified. The department and the
law enforcement agency shall cooperate to allow the criminal
investigation to proceed concurrently with, and not be hindered

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365 by, the protective investigation. The department shall make a
366 preliminary written report to the law enforcement agencies
367 within 5 working days after the oral report. The department
368 shall, within 24 hours after receipt of the report, notify the
369 ~~appropriate Florida local advocacy council, or~~ long-term care
370 ~~ombudsman council, when appropriate,~~ that an alleged abuse,
371 neglect, or exploitation perpetrated by a second party has
372 occurred. Notice to the ~~Florida local advocacy council or~~ long-
373 term care ombudsman council may be accomplished orally or in
374 writing and shall include the name and location of the
375 vulnerable adult alleged to have been abused, neglected, or
376 exploited and the nature of the report.

377 Section 16. Subsection (8) of section 415.1055, Florida
378 Statutes, is amended to read:

379 415.1055 Notification to administrative entities.—

380 (8) At the conclusion of a protective investigation at a
381 facility, the department shall notify ~~either the Florida local~~
382 ~~advocacy council or~~ long-term care ombudsman council of the
383 results of the investigation. This notification must be in
384 writing.

385 Section 17. Subsection (2) of section 415.106, Florida
386 Statutes, is amended to read:

387 415.106 Cooperation by the department and criminal justice
388 and other agencies.—

389 (2) To ensure coordination, communication, and cooperation
390 with the investigation of abuse, neglect, or exploitation of
391 vulnerable adults, the department shall develop and maintain
392 interprogram agreements or operational procedures among

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393 appropriate departmental programs and the State Long-Term Care
394 Ombudsman Council, ~~the Florida Statewide Advocacy Council,~~ and
395 other agencies that provide services to vulnerable adults. These
396 agreements or procedures must cover such subjects as the
397 appropriate roles and responsibilities of the department in
398 identifying and responding to reports of abuse, neglect, or
399 exploitation of vulnerable adults; the provision of services;
400 and related coordinated activities.

401 Section 18. Paragraph (g) of subsection (3) of section
402 415.107, Florida Statutes, is amended to read:

403 415.107 Confidentiality of reports and records.—

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

408 (g) Any appropriate official of the ~~Florida advocacy~~
409 ~~council~~ or long-term care ombudsman council investigating a
410 report of known or suspected abuse, neglect, or exploitation of
411 a vulnerable adult.

412 Section 19. Subsection (9) of section 429.19, Florida
413 Statutes, is amended to read:

414 429.19 Violations; imposition of administrative fines;
415 grounds.—

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

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421 Elderly Affairs, the Department of Health, the Department of
422 Children and Family Services, the Agency for Persons with
423 Disabilities, the area agencies on aging, ~~the Florida Statewide~~
424 ~~Advocacy Council~~, and the state and local ombudsman councils.
425 The Department of Children and Family Services shall disseminate
426 the list to service providers under contract to the department
427 who are responsible for referring persons to a facility for
428 residency. The agency may charge a fee commensurate with the
429 cost of printing and postage to other interested parties
430 requesting a copy of this list. This information may be provided
431 electronically or through the agency's Internet site.

432 Section 20. Subsection (2) of section 429.28, Florida
433 Statutes, is amended to read:

434 429.28 Resident bill of rights.—

435 (2) The administrator of a facility shall ensure that a
436 written notice of the rights, obligations, and prohibitions set
437 forth in this part is posted in a prominent place in each
438 facility and read or explained to residents who cannot read.
439 This notice shall include the name, address, and telephone
440 numbers of the local ombudsman council and central abuse hotline
441 and, when applicable, the Advocacy Center for Persons with
442 Disabilities, Inc., ~~and the Florida local advocacy council~~,
443 where complaints may be lodged. The facility must ensure a
444 resident's access to a telephone to call the local ombudsman
445 council, central abuse hotline, and Advocacy Center for Persons
446 with Disabilities, Inc., ~~and the Florida local advocacy council~~.

447 Section 21. Section 429.34, Florida Statutes, is amended
448 to read:

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449 429.34 Right of entry and inspection.—In addition to the
450 requirements of s. 408.811, any duly designated officer or
451 employee of the department, the Department of Children and
452 Family Services, the Medicaid Fraud Control Unit of the Office
453 of the Attorney General, the state or local fire marshal, or a
454 member of the state or local long-term care ombudsman council
455 shall have the right to enter unannounced upon and into the
456 premises of any facility licensed pursuant to this part in order
457 to determine the state of compliance with the provisions of this
458 part, part II of chapter 408, and applicable rules. Data
459 collected by the state or local long-term care ombudsman
460 councils ~~or the state or local advocacy councils~~ may be used by
461 the agency in investigations involving violations of regulatory
462 standards.

463 Section 22. This act shall take effect July 1, 2011.