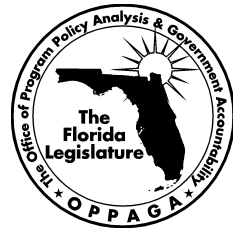




# The Florida Legislature

OFFICE OF PROGRAM POLICY ANALYSIS AND  
GOVERNMENT ACCOUNTABILITY



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## RESEARCH MEMORANDUM

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### Statewide Advocacy Council Activities Overlap with Other Entities, but Duplication Is Minimal

October 13, 2009

#### *Summary*

As requested, OPPAGA examined whether the Statewide Advocacy Council is duplicative of other state entities. The council performs similar activities as those performed by other entities, but duplication among the entities is minimal. We examined the advantages and disadvantages of continuing, eliminating, or transferring the Statewide Advocacy Council.

#### *Program Purpose, Organization, and Responsibilities*

The mission of the Statewide Advocacy Council (SAC) is to protect and advocate for a better quality of life for Floridians with unique needs. In 2000, the Legislature created a system that includes the Statewide Advocacy Council and local advocacy councils to serve as a consumer protection mechanism without interference by an executive agency for persons receiving services from certain state agencies. The SAC's statutory function is to provide a volunteer network that monitors and investigates conditions that constitute a threat to the rights, health, safety or welfare of persons who receive services from programs operated, funded, or contracted by four state agencies, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Children and Families, and the Department of Elder Affairs.<sup>1</sup> The types of programs and facilities monitored and investigated by the volunteer network include group homes for persons with developmental disabilities, adult day training programs, inpatient and outpatient mental health and substance abuse facilities, economic self-sufficiency offices, Baker Act facilities, child care facilities, and licensed foster homes.

The SAC is under the direction of the Executive Office of the Governor and has 15 volunteer members appointed by the Governor. The SAC is staffed with five full-time equivalent positions and one OPS position, including the executive director, four regional staff and one administrative assistant.

The SAC's primary role is to oversee and supervise the operation of 25 local advocacy councils and serve as the appellate body for complaints that the local advocacy councils have not been able to resolve. Located throughout the state and organized into 15 service areas, the local

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<sup>1</sup> Section [402.164](#), F.S.

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advocacy councils are composed of 270 volunteer members appointed by the Governor.<sup>2</sup> The local advocacy councils have to meet at least six times annually to coordinate their primary responsibilities of monitoring programs and facilities, and investigating complaints.

- **Monitoring.** Local advocacy council volunteers conduct monitoring visits of facilities serving clients served by the four state agencies over which they have purview. The purpose of these visits is to determine if there are any conditions present in a facility that could result in a future adverse incident. Each local advocacy council decides the number and frequency of monitoring based on local capacity and priorities. For example, councils with larger numbers of volunteers may have the capacity to monitor more facilities more often. On a site visit, volunteers talk to residents and staff, review facility records, and record their observations about the facility on a monitoring checklist.<sup>3</sup> Volunteers report their monitoring activities and any related findings and recommendations at local council meetings. They forward their findings and recommendations via letter to the facility and its licensing agency.
- **Investigations.** Section 402.166, *Florida Statutes*, requires local advocacy councils to investigate complaints of abuse or deprivation of rights by a state agency or their providers. Local advocacy council volunteers gather information about alleged incidents by conducting interviews and visiting facilities or program sites. The purpose of the investigations is to determine if agency and provider staff followed established policies and procedures and if needed services are in place. Volunteers report their findings and related recommendations at council meetings. The local advocacy councils forward their recommendations to the facility and its licensing agency when they find that a complaint was valid. These recommendations can direct a facility and licensing agency to take actions to prevent future adverse incidents, such as improving a facility's physical condition and enforcing safety procedures.

Statutes authorize the Governor to assign the SAC to any executive agency for administrative support purposes.<sup>4</sup> In Fiscal Year 2004-05, the Governor assigned this role to the Agency for Health Care Administration. For Fiscal Year 2009-10, the Legislature appropriated the Agency for Health Care Administration \$555,437 from general revenue, including \$349,566 for salaries and benefits and \$137,450 for expenses, and five FTEs for the SAC. The SAC also has one OPS position.

### ***State agencies also conduct monitoring and investigations, but for different purposes***

The four state agencies that oversee the facilities under the councils' purview also monitor and investigate these facilities. However, the purpose and role of the agencies' monitoring and investigations differ from those performed by the council. The agencies and councils coordinate activities to avoid duplication.

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<sup>2</sup> There are three types of local advocacy councils: multi-program councils, which can handle matters relating to all types of client groups; mental health councils, which serve persons who receive mental health services including treatment for abuse of drugs and alcohol; and developmental disabilities councils, which serve persons with developmental disabilities.

<sup>3</sup> Specific monitoring checklists are available for each type of facility.

<sup>4</sup> Section [402.165](#), *F.S.*

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State agencies and the Statewide Advocacy Council both conduct monitoring and investigations. The Agency for Health Care Administration, the Agency for Persons with Disabilities, and the Department of Children and Families monitor and investigate the client programs and services they administer.<sup>5</sup> These activities include contract monitoring, licensing reviews, quality assurance reviews, and inspector general investigations.

However, the purposes of these activities and the role of monitors and investigators differ. State agencies conduct monitoring and investigations to ensure that their employees and contractors follow state and federal rules, regulations, and laws designed to ensure the health, safety, and welfare of clients. For example, the Agency for Health Care Administration reported that it performs annual surveys of Crisis Stabilization Units and Residential Treatment Facilities for Children and Adolescents to determine whether the facilities are operating in compliance with laws and regulations.

In contrast, the local advocacy councils advocate on behalf of clients and work to resolve specific complaints made by clients. In addition, their monitoring and investigation activities are intended to help ensure that agencies and their contracted providers are safeguarding the health, safety, and welfare of persons receiving services. The local advocacy councils' monitoring and investigations can result in recommendations to the facility and the agencies to improve programs and the quality of life for those individuals. For example, one local advocacy council received a complaint that a client with developmental disabilities received a new wheelchair that needed adjustments to make it usable, but the contracted provider refused to make these adjustments. Council volunteers worked with the provider to negotiate a payment to the client's family so that it could arrange for the necessary adjustments to the wheelchair.

Also, because state agencies use their own employees and contractors to conduct their monitoring and investigations, these persons are subject to the agency's control, supervision, or direction. The Legislature moved the SAC to the Executive Office of the Governor from the Department of Children and Families in Fiscal Year 2004-05 so that council volunteers could operate without interference by an executive agency and function as a third-party entity to advocate on behalf of clients served by the state.

The state agencies coordinate activities with the Statewide Advocacy Council and local advocacy councils. Staff from the Department of Children and Families and Agency for Persons with Disabilities often attend local advocacy council meetings and interact with council staff when discussing investigations. The local councils send copies of their monitoring and investigation reports to the relevant agencies to ensure that the agencies are aware of problems they have identified through their work. In addition, the SAC enters into annual interagency agreements with these agencies that define the roles and responsibilities of each entity, including access to records and other information, such as abuse reports, and training requirements. The SAC is working to finalize an agreement with the Agency for Healthcare Administration.

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<sup>5</sup> The Department of Elder Affairs also conducts monitoring and investigations of client programs and services through the Office of the Long-Term Care Ombudsman. The SAC has an interagency agreement with this entity.

***Two other entities also conduct facility monitoring and investigations, but there is limited duplication with council activities***

Two other entities, the Office of the Long-Term Care Ombudsman and the Advocacy Center for Persons with Disabilities, Inc. (Advocacy Center), conduct the same types of activities as the SAC.<sup>6</sup> While the ombudsman and the SAC coordinate their efforts to prevent duplication, there is some overlap in activities and clients between the SAC and the Advocacy Center.

The Office of the Long-Term Care Ombudsman conducts the same types of monitoring and investigative activities as the Statewide Advocacy Council, but coordinates its activities with the council to avoid duplication. The Office of the Long-Term Care Ombudsman under the auspices of the Department of Elder Affairs is a statewide, volunteer-based system of 17 district councils that identify, investigate, and resolve complaints made by or on behalf of long-term care facility residents. Ombudsman volunteers also conduct monitoring visits of long-term care facilities. The federal Older Americans Act, which provides funding for nutrition programs and in-home and supportive services for elders, also requires states to have an ombudsman. In Fiscal Year 2009-10, the program was appropriated \$1.9 million in state and federal dollars (\$921,985 in general revenue and \$1,026,020 in federal funds). The program has 66.5 paid staff and currently has 466 volunteers serving across the state.

As required by statute, the SAC and the ombudsman develop and annually renew an interagency agreement to coordinate their advocacy efforts for residents of long-term care facilities and avoid duplication of services. In April 2009, these entities clarified their agreement by adding language designating the ombudsman as the entity responsible for monitoring and investigating complaints involving residents of long-term care facilities who are aged 60 and over. The SAC will investigate any complaints involving residents under the age of 60 as well as older residents who receive mental health or developmental disability services. The interagency agreement also provides for the coordination of investigations and sharing of information when appropriate.

There is some overlap between the mission and activities of the Advocacy Center and the Statewide Advocacy Council, but duplication is minimized due to their use of different approaches. The mission of the Advocacy Center for Persons with Disabilities, Inc., (Advocacy Center) is to advance quality of life, dignity, equality, self-determination, and freedom of choice for persons with disabilities. The Advocacy Center is a non-profit corporation designated by the Governor of Florida as a protection and advocacy system for protecting the rights of Floridians with disabilities. States must designate an entity to serve as this system in order to receive federal funding for the disabled. The Advocacy Center provides services for the disabled such as legal representation, monitoring, investigations, and other advocacy services. The Advocacy Center's revenues totaled \$5.8 million in 2008 and it has 58 staff located in Hollywood, Tallahassee, and Tampa.<sup>7</sup>

The Advocacy Center and the local advocacy councils have similar missions and perform some of the same types of activities for similar groups. The Advocacy Center and the SAC have similar missions to protect the rights of vulnerable citizens. As a result, some of their activities

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<sup>6</sup> We did not further evaluate two other entities that have advocacy missions because their primary functions are dissimilar. The Statewide Public Guardianship Office and the Guardian Ad Litem Program advocate on behalf of vulnerable citizens, but their roles are limited to primarily representing the legal interest of individuals. The entities also do not monitor facilities.

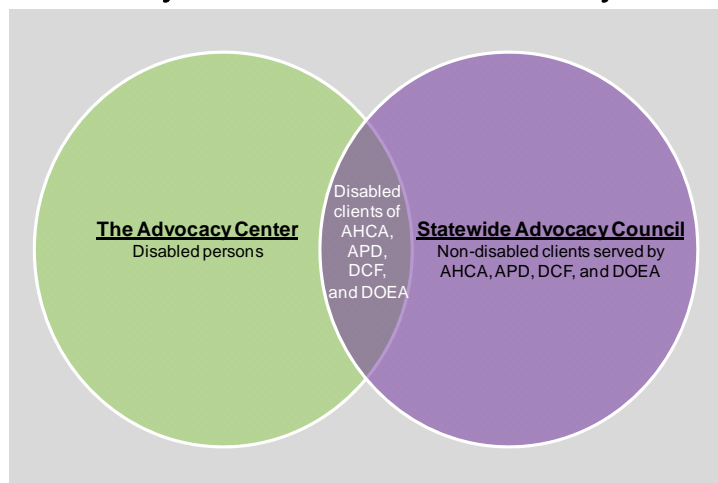
<sup>7</sup> The majority of the Advocacy Center's funding comes from federal grants, including the Protection and Advocacy for Persons with Developmental Disabilities grants and Protection and Advocacy for Individuals with Mental Illness grants.

are similar. The Advocacy Center and the councils both monitor facilities and programs that serve the disabled, such as mental health facilities and developmental disabilities facilities. To do this, these entities use monitoring tools to assess facility conditions, safety procedures, and provide access to contact information for clients to request advocacy assistance. In addition, both can communicate with residents to assess if their needs are being met. Both the Advocacy Center and the councils also conduct investigations into allegations of abuse and neglect and rights violations for disabled individuals. Both also may initiate investigations from individual complaints or based upon direct observation during monitoring visits to facilities. To carry out investigations, both conduct interviews with persons such as the alleged victims and facility staff, and can perform site visits.

In addition, the Advocacy Center and SAC serve some of the same client groups (see Exhibit 1). The Advocacy Center is required to serve individuals with disabilities while some of the clients under the SAC's purview also are disabled. For example, both the Advocacy Center and SAC serve clients with developmental disabilities.

### Exhibit 1

#### The Advocacy Center and the Statewide Advocacy Council Serve Some of the Same Clients



Source: OPPAGA analysis.

However, there are some differences between the two entities in their jurisdiction over specific client groups. For example, the Advocacy Center serves persons with disabilities receiving services from the educational system, the correctional system, and vocational rehabilitation. The SAC's statutory purview does not include these client groups.<sup>8</sup> However, the SAC serves clients not served by the Advocacy Center, such as non-disabled children in foster care or child care and non-disabled individuals receiving services from economic self-sufficiency, Medicaid, and substance abuse programs.

<sup>8</sup> Section [402.164 \(2\)\(b\)](#), *F.S.*, defines Statewide Advocacy Council clients as a client of the Agency for Persons with Disabilities, the Agency for Health Care Administration, the Department of Children and Family Services, or the Department of Elderly Affairs, as defined in ss. [393.063](#), [394.67](#), [397.311](#), and [400.960](#), *F.S.*; a forensic client or client as defined in s. [916.106](#), *F.S.*; a child or youth as defined in s. [39.01](#), *F.S.*; a child as defined in s. [827.01](#), *F.S.*; a family as defined in s. [414.0252](#), *F.S.*; a participant as defined in s. [429.901](#), *F.S.*; a resident as defined in s. [429.02](#), *F.S.*, a Medicaid recipient or recipient as defined in s. [409.901](#), *F.S.*; a child receiving child care as defined in s. [402.302](#), *F.S.*; a disabled adult as defined in ss. [410.032](#) and [410.603](#), *F.S.*; or a victim as defined in ss. [39.01](#) and [415.102](#), *F.S.*, as each definition applies within its respective chapter of the statutes.

While it is possible for both entities to conduct monitoring in some of the same facilities, they use different methods to select which facilities to monitor and determine the frequency of monitoring visits. These different methods make it unlikely that the Advocacy Center and the councils would monitor the same facilities at the same time.

The two entities use different methods to select facilities for monitoring. The Advocacy Center's Board of Directors adopts annual goals based on federal grant requirements and input from staff and the public. Staff conducts monitoring and other activities based on these goals. For example, in 2008, the Advocacy Center began an initiative to monitor and conduct legal rights training at all of the state's mental health treatment facilities. Each local advocacy council uses various mechanisms to decide which facilities to monitor including abuse notifications from the Department of Children and Families, complaints made directly to the council, media coverage of abuse or poor conditions in a facility, and a schedule the council has developed.

The frequency with which the entities monitor facilities also varies. Advocacy Center staff reported that they conducted eight monitoring visits to facilities in Federal Fiscal Year 2008-09, in addition to other on-site investigation and monitoring activities resulting from specific complaints. During Fiscal Year 2008-09, local advocacy councils conducted 356 monitoring visits to facilities.

Differences in the entities' approaches to initiating and resolving investigations also reduce the likelihood of duplication. Both entities conduct investigations; however, there are differences in how these investigations are initiated and resolved. The Advocacy Center uses a formalized case selection process and has discretion to determine if staff will investigate a complaint. This process uses an intake and referral system to gather demographic information and other details from individuals who contact the center via telephone. Staff then decides whether they will investigate an individual's complaint using formal case selection criteria. These criteria include if the issue fits within the center's federal grant requirements and annual program goals, the urgency of a particular matter and likely consequences for the individual, the effect resolving the complaint will have for individuals with disabilities, current staff workload, and the potential for successful resolution.

Local advocacy councils do not use formalized selection criteria to determine if they will initiate an investigation. Instead, the local advocacy councils must investigate complaints received from the Governor's office and any calls to the SAC's hotline that fall within its jurisdiction. In addition, the councils have the discretion to initiate an investigation based on information such as abuse notifications from the Department of Children and Families.

The Advocacy Center and councils also differ in how they resolve investigations. The center can take a variety of actions in response to its investigatory findings. These actions range from providing information, advice, and short-term technical assistance to negotiating on behalf of an individual. The Advocacy Center also may represent an individual in administrative or legal proceedings. If a complaint suggests evidence of systemic failure, the center may advocate on behalf of an individual, including entering into class litigation. The SAC uses a different approach to resolving investigations. If a volunteer conducts an investigation and finds that the allegation is supported by clear and convincing evidence, the case is found to be valid and the council makes recommendations to correct the problem and prevent the future occurrence of the

same or similar problem. Local advocacy councils send these recommendations via letter to the appropriate facility, service, or program and the applicable licensing agency.

### *Options for Legislative Consideration*

Given the overlap in some activities of the Statewide Advocacy Council with state agencies and the Advocacy Center for Persons with Disabilities, we examined advantages and disadvantages of three options: continue the Statewide Advocacy Council and local advocacy councils, eliminate the Statewide Advocacy Council and local advocacy councils, and transfer the Statewide Advocacy Council and local advocacy councils to the Advocacy Center for Persons with Disabilities.

Option 1: Continue the Statewide Advocacy Council and Local Advocacy Councils. The primary advantage of continuing the Statewide Advocacy Council and local advocacy councils is that they provide an independent check and balance on the provision of state services to vulnerable clients. Having multiple entities, including the councils, conduct monitoring and investigations provides broader coverage to help ensure the health and safety of these clients. However, continuing the councils would require over \$555,000 in general revenue annually. In addition, the councils rely on volunteers to conduct their activities and only 3 of the 15 service areas have enough volunteers to staff a multi-program council, a mental health council, and a developmental disabilities council. In the areas that do not have all three council types, there may not be the capacity to conduct all activities for all client groups. Also, multi-program council volunteer participation varies throughout the state; for example, the Jacksonville multi-program council currently only has 4 of 15 volunteer slots filled.

Option 2: Eliminate the Statewide Advocacy Council and Local Advocacy Councils. The primary advantage of this option is that the state would save approximately \$555,437 in general revenue annually. Moreover, some client groups, such as the elderly and disabled, would continue to have access to a third-party entity that monitors facilities and investigates complaints through the Long-Term Care Ombudsman and the Advocacy Center.

A primary disadvantage of eliminating the councils is that the state would lose the benefit of having monitoring and investigations conducted by volunteers who do not have an organizational or financial interest in the continued provision of state-funded services. Also, the local advocacy councils provide a multidisciplinary approach to resolving issues because they are composed of members from a variety of backgrounds, cultures, and professions with a common interest of protecting the rights of the individuals receiving services, while staff operating on behalf of a state agency may not represent such a wide variety of perspectives. In addition, the activities conducted by council volunteers may detect and address issues that would not normally rise to the level of state agency involvement but affect clients, such as whether a wheelchair provided to a client was sufficient to address his or her needs.

Option 3: Transfer the Statewide Advocacy Council and Local Advocacy Councils to the Advocacy Center for Persons with Disabilities. This option would require the Legislature to amend s. 402.165, *Florida Statutes*, to allow the activities of the SAC to be performed by a non-governmental entity such as the Advocacy Center. The primary advantage of this option is the potential for cost savings resulting from administrative reductions such as staff and workspace consolidations. In addition, transferring the SAC would eliminate the overlap that currently exists between the Advocacy Center and the SAC. Also, the capacity of the center to conduct its

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activities may increase through the use of local advocacy council volunteers. Finally, placing the SAC in a non-governmental entity like the Advocacy Center would be consistent with the role of the SAC as a third-party entity because it would no longer be housed in a state agency.

The primary disadvantage of transferring the SAC to the Advocacy Center is that it could result in a narrowing of the SAC's focus due to differences in the entities' purposes. The Advocacy Center is required by federal law to serve disabled clients, and this federal mandate could potentially result in a loss of focus on non-disabled clients currently served by the SAC. Also, the Advocacy Center's mission to provide legally based advocacy could alter SAC activities. For example, the SAC's monitoring and investigation activities could be shifted from preventing future adverse incidents through recommendations to facilities and licensing agencies to compiling evidence for potential litigation.