

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1652

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Crist

SUBJECT: Nursing Homes and Assisted Living Facilities

DATE: March 28, 2001 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------|
| 1. | Thomas | Wilson | HC | Favorable/CS |
| 2. | _____ | _____ | GO | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

Committee Substitute for Senate Bill 1652 provides that the terms of all of the members of the Governor’s Panel on Excellence in Long-Term Care expire on September 30, 2001. The membership of the panel is reconfigured effective October 1, 2001, and terms of membership are staggered.

The bill also provides that independent marketing agencies are exempted from the prohibition on payment for referrals of residents to assisted living facilities. The independent marketing agency must: represent the assisted living facility under a nonexclusive contract; represent multiple facilities with different owners; and clearly indicate to referred residents, prior to referral, all facilities represented by the agency.

This bill amends sections 400.235 and 400.4195, Florida Statutes.

II. Present Situation:

For more than 20 years, the State of Florida has grappled with issues relating to the quality of care that nursing homes provide to their residents. The quality of nursing home care continues to be a concern because residents are generally showing increasing levels of acuity and disability and require increasingly more complex treatments. These concerns about problems in the quality of long-term care persist despite some improvements in recent years, and are reflected in, and spurred by, recent government reports, congressional hearings, newspaper stories, and criminal and civil court cases. Debate also continues over the effectiveness and appropriate scope of state and national policies to regulate long-term care, reduce poor performance of providers, and improve the health and well being of those receiving care. These questions and debates extend beyond nursing homes to home and community-based services and residential care facilities.

Regulation of Nursing Homes by State Government

Nursing Homes and Related Facilities is the subject of chapter 400, F.S. Part I of chapter 400, F.S., establishes the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, and the local long-term care ombudsman councils. Part II of chapter 400, F.S., provides for the regulation of nursing homes and part III of chapter 400, F.S., provides for the regulation of assisted living facilities. The Agency for Health Care Administration (AHCA) is charged with the responsibility of developing rules related to the operation of nursing homes, and the Department of Elder Affairs develops rules for assisted living facilities. AHCA licenses and inspects nursing homes and other facilities licensed under chapter 400, F.S. The Department of Health performs inspections of facilities for sanitation and physical safety purposes and local authorities have jurisdiction over fire safety inspections.

AHCA surveys nursing homes for state licensure and Medicare certification purposes. Surveys are unannounced and must take place at least once every 15 months. Any deficient practices found by AHCA surveyors will be ranked (class I, II, III, and IV, in order of severity), and the facility must correct any deficiency by a time certain.

Gold Seal Program

Chapter 99-394, Laws of Florida, created the Gold Seal Program at s. 400.235, F.S., to address nursing home quality. The Legislature's intent is to protect the health and welfare of persons receiving care in nursing facilities, and to develop a regulatory framework that promotes the stability of the industry and facilitates the physical, social, and emotional well-being of nursing home residents. It is also the intent of the Legislature to develop an award and recognition program for nursing facilities that demonstrate excellence in long-term care over a sustained period – the Gold Seal Program. The program is developed and implemented by the Governor's Panel on Excellence in Long-Term Care, operating under the authority of the Executive Office of the Governor.

The thirteen member panel is composed of: three persons appointed by the Governor, to include a consumer advocate for seniors and two persons with expertise in the fields of quality management, service delivery excellence, or public sector accountability; three persons appointed by the Secretary of Elderly Affairs, to include a member of a nursing facility family and resident care council, and a member of the University Consortium on Aging; the state Long-Term Care Ombudsman; one person appointed by the Florida Life Care Residents Association; one person appointed by the Secretary of Health; two persons appointed by the Secretary of AHCA; one person appointed by the Florida Association of Homes for the Aging; and one person appointed by the Florida Health Care Association. Vacancies are to be filled in the same manner as the original appointments.

Panel members are restricted from having an ownership interest in a nursing facility and members employed by a nursing facility are restricted from participating in the review of or vote on their own employing facility. Recommendations to the panel for designations of nursing homes as Gold Seal facilities were received beginning January 1, 2000. The panel considers the quality of care provided to residents in its decisions.

Gold Seal facilities must: have no class I or class II deficiencies within the 30 months preceding application; evidence financial soundness and stability; participate consistently in consumer satisfaction processes prescribed by AHCA; evidence involvement of residents' families and members of the community; have a stable workforce (low rate of turnover of certified nursing assistants over last 30 months); evidence an outstanding record as to complaints to the state Long-Term Care Ombudsman Council over the prior 30 months; and provide targeted inservice training.

AHCA, nursing facility industry organizations, the state Long-Term Care Ombudsman Council, and members of the community may make recommendations to the Governor as to facilities that may be considered for Gold Seal status. The panel reviews nominees and makes recommendations to the Governor for final approval and award. The decisions of the Governor regarding Gold Seal status are final and are not subject to appeal. Facilities must be open for at least 30 months to be considered for nomination. Gold Seals are not transferable and entitle the facility to be subject to AHCA survey for relicensure and certification for Medicare purposes every 2 years.¹

As of the date of this analysis, the rules relating to the Gold Seal Program have not been adopted and no nursing homes have received the Gold Seal designation.

Independent Marketing Agencies

Section 400.4195, F.S., provides that it is illegal for any assisted living facility to contract or promise to pay or receive any commission, bonus, kickback, rebate, or split-fee arrangement in any form whatsoever with any entity for a resident referral. A facility may employ or contract with persons to market the facility, provided the employee or contract provider clearly indicates that he or she represents the facility. A person or agency independent of the facility may provide placement or referral services for a fee to individuals seeking assistance in finding a suitable facility, however, any fees must be paid by the individual seeking placement and not by the facility. Any violation of this prohibition is considered patient brokering and is punishable as provided in s. 817.505, F.S.²

Section 817.505, F.S., provides that it is unlawful for any health care provider or health care facility to pay or receive any fees to induce the referrals of patients or patronage from another health care provider or facility. The prohibition does not apply to: any discount or waiver permitted under 42 USC s. 1320a-7b(b) or related regulations; any financial arrangement within a group practice as defined by s. 456.053, F.S.; payments to a provider or facility for professional consultation; payments by insurance agents as permitted by the insurance code; payments by insurers under a health benefit plan; payments to or by a provider or facility for goods or services under a health benefit plan; insurance advertising gifts permitted under s. 626.9541(1)(m), F.S.; payments to a nurse registry licensed under s. 400.506, F.S., for referrals of clients to the nurse registry; and payments by a provider or facility to a health, mental health, or substance abuse information service under specified circumstances. Any person who violates any provision of s.

¹ Nursing homes are subject to survey by AHCA at least every 15 months otherwise under s. 400.19(3), F.S.

² A similar prohibition against patient brokering exists in s. 456.054, F.S., relating to health professions and occupations.

817.505, F.S., commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083 or 775.084, F.S. The Attorney General or the local state attorney may maintain an action for injunctive relief in order to enforce the anti-patient brokering law. Any party bringing an injunctive action under s. 817.505, F.S., is entitled to be awarded costs and fees.

Independent marketing agencies are adult care referral services that deal in arranging proper and adequate care for the disabled or elderly. Essentially, the agencies market assisted living facilities, as well as other health and residential goods and services, to persons seeking assistance in resident placement and care. Such agencies are permissible to the extent the provisions of ss. 400.4195 and 817.505, F.S., are followed.

III. Effect of Proposed Changes:

Section 1. Amends s. 400.235, F.S., to provide that the terms of the members of the Governor's Panel on Excellence in Long-Term Care expire on September 30, 2001, for the purpose of staggering the panel members' terms. Effective October 1, 2001, the panel will be composed of: a consumer advocate for senior citizens, appointed by the Governor, to serve a 4-year term; 2 persons with expertise in the fields of quality management, service delivery excellence, or public-sector accountability, appointed by the Governor, to serve 3-year terms; a consumer advocate for senior citizens, appointed by the Secretary of Elderly Affairs, to serve a 4-year term; an active member of a nursing facility family and resident care council, appointed by the Secretary of Elderly Affairs, to serve a 1-year term; a member of the University Consortium on Aging, appointed by the Secretary of Elderly Affairs, to serve a 2-year term; the state Long-Term Care Ombudsman, to serve an indefinite term; a consumer advocate for senior citizens, appointed by the Florida Life Care Residents Association, to serve a 3-year term; a consumer advocate for senior citizens, appointed by the Secretary of AHCA, to serve a 4-year term; the Deputy Secretary for Medicaid of AHCA, to serve an indefinite term; 1 person appointed by the Florida Association of Homes for the Aging, to serve a 1-year term; 1 person appointed by the Florida Health Care Association, to serve a 2-year term; a member of the Florida Silver Hair Legislature appointed by the Florida Silver Hair Legislature, to serve a 1-year term; and a member of the Florida State Council of Senior Citizens appointed by the Florida State Council of Senior Citizens, to serve a 2-year term.

Thereafter, all panel members except the state Long-Term Care Ombudsman and the Deputy Secretary for Medicaid of AHCA will be appointed to serve 4-year terms. A panel member may not be appointed to serve more than two consecutive 4-year terms. Panel members will select the panel chair by a majority vote at the panel's first meeting after all members have been appointed.

The consumer advocate for senior citizens cannot: receive money from the nursing home industry, or have a relative receive money from the industry, in the form of wages, contributions or gifts; be an employee of AHCA, the Department of Health, or the Department of Elderly Affairs; or be a member of an organized senior advocacy group or have had a relative in a nursing home.

Section 2. Amends s. 400.4195, F.S., to provide that independent marketing agencies are exempted from the prohibition on payment for referrals of residents to assisted living facilities. The independent marketing agency must: represent the assisted living facility under a

nonexclusive contract; represent multiple facilities with different owners; and clearly indicate to referred residents, prior to referral, all facilities represented by the agency.

Section 3. Provides that if the bill becomes law, it will be effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.