

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/CS/SB 296

SPONSOR: Banking and Insurance Committee, Health, Aging, and Long-Term Care Committee and Senator Saunders

SUBJECT: Retirement Communities

DATE: March 12, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Liem</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for CS/SB 296 specifies that a nursing home that is part of a Continuing Care Retirement Community (CCRC) that is accredited by a recognized accrediting organization and that meets the minimum liquid reserve requirements established by the Office of Insurance Regulation satisfies the financial criteria for the Gold Seal Program, as long as the accreditation is not provisional.¹ The Governor's Panel on Excellence in Long-term Care, in conjunction with the Agency for Health Care Administration, administers the award program, known as the Gold Seal Program, which recognizes nursing facilities that demonstrate excellence in long-term care over a sustained period of time.

The bill revises nursing home staffing standards to permit a nursing home that has a standard license or is a Gold Seal facility, exceeds minimum staffing requirements, and is a part of a CCRC or retirement community to share programming and staff with their assisted living, home health, and adult day care services. The bill establishes additional criteria for the sharing of staff and authorizes the Agency for Health Care administration to adopt rules for documentation necessary to determine compliance with staffing requirements.

The bill modifies requirements for residents' organizations in CCRCs and selection of a resident representative before the provider's governing body to specify the methods of election of representatives, requirements for notice to residents, minimum levels of participation, and the

¹ Effective January 7, 2003, the Department of Banking and Finance and the Department of Insurance were merged to form the Department of Financial Services and the Financial Services Commission was created. The act created the Office of Insurance Regulation, under the Financial Services Commission. The office is responsible for all activities concerning insurers and other risk bearing entities. [ss. 2 and 4, ch. 2002-404, L.O.F.]

duration of the term of election, and requires that there shall be only one resident's organization which represents the residents before the governing body of a provider.

This bill amends the following sections in the Florida Statutes: 400.235, 400.141, 651.081, and 651.085.

II. Present Situation:

Continuing Care Retirement Communities

Continuing Care Retirement Communities include skilled nursing facilities and may also include assisted living facilities and home health agencies, each licensed separately under the appropriate part of chapter 400, F.S. The CCRCs also include independent living arrangements such as houses and apartments where services may be provided. The Office of Insurance Regulation regulates CCRCs under authority of chapter 651, F.S. The CCRCs are regulated as a form of specialty insurance provider, since there is generally a substantial initial investment by the resident, with the CCRC committing to provide life-long care. The office monitors the financial reserves maintained by the CCRC to ensure that sufficient funds are available to meet the obligations to the residents.

The Governor's Panel on Excellence in Long Term Care works in conjunction with the Agency for Health Care Administration (AHCA) to carry out the Gold Seal Program as authorized in s. 400.235, F.S. The Gold Seal Program provides recognition to outstanding nursing homes. 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 the 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 in-service training.

Staffing standards for nursing homes (including those that are a part of a continuing care retirement center) were established in CS/CS/CS/SB 1202 during the 2001 legislative session. The bill requires 2.3 hours of direct care per resident per day by certified nursing assistants effective January 1, 2002, increasing to 2.6 hours beginning January 1, 2003, and up to 2.9 hours beginning January 1, 2004, with a minimum, at all times, of one certified nursing assistant per 20 residents. The bill requires 1 hour of direct care per resident per day by licensed nurses, with a minimum, at all times, of one licensed nurse per 40 residents. Nursing homes are required to cease admissions when staffing is below minimums. Failure to self-impose a moratorium constitutes a class II deficiency.

Section 400.141, F.S., permits sharing of staff and programming if a facility has a standard license or the Gold Seal designation and is part of a retirement community (including a CCRC) which includes an assisted living facility, home health agency or an adult day care center, and demonstrates that staffing at the facility exceeded minimum standards.

Residents' Organizations in CCRCs

Section 651.081, F.S., permits residents of CCRCs to organize themselves for purposes of information sharing and mutual aid and protection. A residents' organization formed under this section, whose members are elected by a majority of the residents, is permitted, in s. 651.085(2), F.S., to organize a meeting of the majority of the facility residents to determine whether to elect a resident to represent them before the governing body of the provider. If no residents' organization exists, any resident may organize a meeting of the majority of the residents to determine whether to elect a representative, and elect the representative. The organization or the resident which convenes the meeting is required to give all residents at least 7 days notice in a conspicuous place at the facility.

III. Effect of Proposed Changes:

Section 1. Amends s. 400.235(5)(b), F.S., relating to criteria for Gold Seal facilities, to specify that the requirement that a facility show evidence of financial soundness and stability is satisfied by a nursing home that is part of the same corporate entity as a continuing care facility licensed under ch. 651, F.S., which meets the minimum liquid reserve requirements specified in s. 651.035, F.S., and is accredited by a recognized accrediting organization under s. 651.028, F.S., and rules of the Office of Insurance Regulation.

Section 2. Amends s. 400.141(7), F.S., to allow sharing of programming and staff in facilities that are part of a continuing care facility licensed under ch. 651, F.S., or a retirement community that offers other services pursuant to part III, part IV or part V of chapter 400, F.S., (these services are assisted living, home health, and adult day care services) on a single campus if:

- The facility has standard licensure status or is a Gold Seal facility;
- Exceeds minimum required hours of licensed nursing and certified nursing assistants direct care per resident per day; and
- At the time of re-licensure, a continuing care facility or retirement community that uses this option must demonstrate, through staffing records, that minimum staffing requirements for the facility were exceeded.

Licensed nurses and certified nursing assistants may be used to provide services elsewhere on campus if the facility exceeds the minimum number of direct care hours required per resident per day and the number of residents receiving direct care services from a licensed nurse or a certified nursing assistant does not cause the facility to violate the staffing ratios required under s. 400.23(3)(a), F.S. Retirement communities that use shared staffing are required to report and demonstrate compliance with staffing requirements at the time of inspection and in the semiannual report to the agency. Compliance with the minimum staffing ratios will be based on total number of residents receiving direct care services, regardless of where they reside on campus. The agency is authorized to adopt rules for documentation necessary to determine compliance with these provisions.

If the facility receives a conditional license, it may not share staff until the conditional license status ends. The bill clarifies that the subsection does not restrict the agency's authority to require additional staff if a facility is cited for deficiencies caused by insufficient staff.

Section 3. Amends s. 651.081, F.S., regarding residents' organizations in continuing care facilities, to allow creation of a resident's organization via an election. Standards established for the election are:

- Voting is by ballot, either in person or by proxy;
- If the election is to be held during a meeting, a notice of the organizational meeting must be provided to all residents at least 10 business days before the election;
- Notice may be given through internal mailboxes, communitywide newsletters, bulletin boards, in-house television, or other similar means of communication; and
- An election is valid if at least 40 percent of the total resident population participates in the election and a majority of participants vote affirmatively for the organization.

The initial residents' organization created under the section is valid for a period of 12 months. If the facility has a residents' association, residents' council or similarly organized body with bylaws and elected officials in effect on July 1, 2003, a new election for that body need not take place until the time for the next regular election specified in the organizations' bylaws. There shall be only one resident's organization which represents the residents before the governing body of the provider.

Section 4. Amends s. 651.085, F.S., to allow residents' organizations, in addition to a majority of residents, to designate a representative before the governing body of a provider and provide procedures for designation of a representative. The section allows a residents' organization formed under s. 651.081, F.S., to either designate a resident to represent them before the governing body of the provider or organize a meeting or ballot election of the residents of the facility to determine whether to elect a resident to represent them before the provider governing body. The resident organization must be of the type described in s. 651.081, F.S., and if none exists, any resident may organize a meeting or ballot election of the residents to determine whether to elect a representative before the provider governing body. Procedures for the election of the representative are specified, including:

- Notice of at least 10 business days;
- Notice may be given through internal mailboxes, communitywide newsletters, bulletin boards, in-house television, or other similar means of communication; and
- An election is valid if at least 40 percent of the total resident population participates in the election and a majority of participants vote affirmatively for the representative.

The representative is elected for at least a 12 month term.

Section 5. Provides that this act takes effect upon becoming a 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 Article VII, Section 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 Article 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 Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill will provide additional flexibility to continuing care retirement communities desiring to become Gold Seal facilities and in the use of programming and staff. The bill will provide specific criteria for residents' organizations in these facilities, decreasing the likelihood that "splinter" or multiple residents' organizations will request representation before the governing body of a provider.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 1 of the committee substitute provides that a nursing home that is part of the same corporate entity as a continuing care facility and meets certain criteria satisfies the financial soundness and stability requirements of the Gold Seal program. The term, "corporate entity," is not defined.

Section 2 of the committee substitute allows sharing of programming and staff in facilities that are part of a continuing care facility or a retirement community that offers certain other services on a single campus. The term, "single campus," is not defined.

VIII. Amendments:

None.