

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 542

INTRODUCER: Health Policy Committee and Senator Stargel

SUBJECT: Continuing Care Facilities

DATE: January 19, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Favorable
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 542 allows a nursing home that applies for the Nursing Home Gold Seal Program to demonstrate that its corporate entity as a whole meets the financial soundness and stability requirements for the program, rather than the nursing home on its own, if the nursing home is part of a:

- Continuing care retirement community that is not accredited; or
- A multifacility corporate entity that operates a combination of nursing homes, assisted living facilities, or independent living facilities.

The bill requires a nursing home that is part of a multifacility corporate entity to also submit a consolidated corporate financial statement to satisfy the financial soundness and stability requirement.

The bill is not expected to have a fiscal impact to the state.

II. Present Situation:

The Nursing Home Gold Seal Program

The Gold Seal Program was created as an award and recognition program for nursing facilities that demonstrate excellence in long-term care over a sustained period.¹ The Gold Seal Program designation may be used in advertising for a facility that has received such designation.² Currently, of the 684 licensed nursing homes in Florida there are 32 Gold Seal facilities.³

Program Eligibility-General

To be considered for the Gold Seal Award a facility must submit the following information to the Agency for Health Care Administration (AHCA):

- A letter of recommendation;⁴
- A completed Gold Seal Award application;
- Financial documentation required by Rule 59A-4.203, F.A.C.; and
- Stable workforce documentation required by Rule 59A-4.204, F.A.C.⁵

To be eligible for the Gold Seal award a facility must meet the following general requirements:

- Be licensed and operating for 30 months prior to application;
- Have no class I or class II deficiencies⁶ within the 30 months preceding the application for the program;
- Provide evidence of financial soundness and stability;
- Participate in a consumer satisfaction process that involves residents, family members, and guardians;
- Provide evidence of the involvement of families and members of the community in the facility on a regular basis;
- Have a stable workforce as evidenced by a low rate of turnover among certified nursing assistants and licensed nurses within the preceding 30 months;
- Provide evidence that verified complaints to the Long-Term Care Ombudsman Program have not resulted in citation for licensure within the preceding 30 months; and
- Provide targeted in-service training to meet the training needs identified by internal or external quality assurance efforts.⁷

¹ Section 400.235(2), F.S.

² Rule 59A-4.201(2), F.A.C.

³ Agency for Health Care Administration, Florida Health Finder Search, facility/provider type: Nursing Home and advanced search: Gold Seal Award Recipient, (search conducted Jan. 17, 2016), *available at*: <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Jan. 17, 2016).

⁴ Section 400.235(6), F.S. The AHCA, a nursing facility industry organization, a consumer, the State Long-Term Care Ombudsman Program, or a member of the community where the nursing home is located may recommend facilities that meet Gold Seal criteria.

⁵ Rule 59A-4.201, F.A.C.

⁶ Class I and II deficiencies are defined in s. 408.813, F.S.

⁷ Sections 400.235(5) and (7), F.S.

Only applicants that have a quality of care ranking within the top 15 percent of facilities regionally, or top 10 percent of facilities statewide, and that have five-star facility designations overall are considered.⁸

Program Eligibility-Financial Soundness and Stability

To be eligible for a Gold Seal Award a facility must provide evidence of financial soundness and stability according to standards adopted by the AHCA in administrative rule.⁹

A nursing home that is not part of the same corporate entity as a continuing care facility must provide evidence of 30 months of financial stability and soundness including:

- Financial statements that include a balance sheet, an income statement, and a statement of cash flow for three consecutive years immediately preceding the application;
- A report from a certified public accountant who has audited or reviewed such financial statements and that specifies an unqualified opinion;
- A one-year set of pro-forma financial statements; and
- At least two of the following:
 - A positive assets to liabilities ratio;
 - A positive tangible net worth; or
 - A times interest earned ratio of 115 percent.¹⁰

A nursing home that is part of the same corporate entity as a continuing care facility satisfies the financial requirements if the continuing care facility:¹¹

- Meets the minimum liquid reserve requirement under s. 651.035; and
- Is accredited by the National Continuing Care Accreditation Commission, as long as the accreditation is not provisional.

Currently, an entity that is part of a consolidated entity can submit consolidated financial statements if the statements break out the balance sheet, income statement and statement of cash flows of the individual licensee.¹²

The nursing home or its parent company¹³ may not have been the subject of bankruptcy proceedings in the preceding 30 months.¹⁴ Facilities operated by a federal or state agency are deemed to be financially stable for purposes of applying for the Gold Seal.¹⁵

⁸ Rule 59A-4.202, F.A.C. Both the ranking and the five-star facility designation are determined by the AHCA.

⁹ Section 400.235(5)(b), F.S., and Rule 59A-4.203, F.A.C.

¹⁰ Rule 59A-4.203, F.A.C.

¹¹ Section 400.235(5)(b), F.S.

¹² Rule 59A-4.203(1)(a), F.A.C.

¹³ A parent company means an entity that owns, leases, or through any other device controls a group of two or more health care facilities or at least one health care facility and any other business. A related party management company is considered to be a parent company. See rule 59A-4.200(3), F.A.C.

¹⁴ Rule 59A-4.203(3), F.A.C.

¹⁵ Section 400.235(5)(b), F.S.

Continuing Care Facilities

A continuing care facility, also known as a continuing care retirement community (CCRC), provides a combination of senior independent living, assisted living, and nursing home services.¹⁶ CCRCs offer different levels of care based on what the CCRC offers and the needs of the resident. A CCRC usually has independent living apartments or houses and a nursing home, and some include an assisted living facility (ALF).¹⁷ Residents pay an entrance fee plus monthly fees and can move from independent living to assisted living (if available) to the nursing home, based on their needs. A CCRC typically provides shelter and nursing care or personal services¹⁸ to residents in a facility upon the payment of an entrance fee.¹⁹ In addition to the entrance fee, a CCRC generally charges residents monthly fees to cover costs related to health care and other aspects of community living.²⁰ As of January 2016, there are 73 licensed CCRCs in Florida.²¹

Oversight responsibility of CCRCs is shared between the AHCA and the Office of Insurance Regulation (OIR). The AHCA licenses the nursing home and ALFs that are part of a CCRC. The OIR regulates the CCRC contracts.²² The OIR is responsible for authorizing and monitoring the operations of facilities and determining the facilities' financial status and management capability.²³ If a continuing care provider is accredited through a process substantially equivalent to the requirements of ch. 651, F.S., the OIR may waive the requirements of that chapter.²⁴ Currently, CCRCs must be accredited by the National Continuing Care Accreditation Commission in order to obtain a waiver of examination and reporting requirements.²⁵

Assisted Living Facilities

An ALF is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.²⁶ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-

¹⁶ Senior Living.org, *Continuing Care Retirement Communities*, (Aug. 11, 2011), available at: <http://www.seniorliving.org/lifestyles/ccrc/> (last visited Jan. 12, 2015).

¹⁷ *Infra* note 22.

¹⁸ CCRCs can provide residents with assisted living, memory support care, dining options, housekeeping, security, transportation, social and recreational activities, and wellness and fitness programs. See Jane E. Zarem, Editor, *Today's Continuing Care Retirement Community*, CCRC Task Force, p. 10, (July 2010), available at: http://www.leadingage.org/uploadedFiles/Content/Consumers/Paying_for_Aging_Services/CCRCcharacteristics_7_2011.pdf (last visited Jan. 12, 2015).

¹⁹ Section 651.011(2), F.S.

²⁰ American Association of Retired Persons, *About Continuing Care Retirement Communities*, available at: http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html (last visited Jan. 12, 2015).

²¹ Office of Insurance Regulation, *Active Company Search, company type: Continuing Care Retirement Community (CCRC)*, (as of Jan. 15, 2016), available at: <http://www.floir.com/CompanySearch/> (last visited Jan. 17, 2016).

²² Florida Agency for Health Care Administration, Resources, Long-Term Care Providers Information, available at: <http://www.floridahealthfinder.gov/seniors/long-term-care.aspx> (last visited Jan. 11, 2015).

²³ See ss. 651.021 and 651.023, F.S.

²⁴ Section 651.028, F.S.

²⁵ Rule 69O-193.055, F.A.C.

²⁶ Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

administration of medication.²⁷ Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.²⁸

An ALF must have a standard license issued by the AHCA under part I of ch. 429, F.S., and part II of ch. 408, F.S.²⁹ In addition to a standard license, an ALF may have one or more specialty licenses that allow the ALF to provide additional care. These specialty licenses include limited nursing services,³⁰ limited mental health services,³¹ and extended congregate care services.³²

Currently, there are 3,078 licensed ALF's in Florida.³³

Senior Independent Living Communities

Senior independent living communities are communities in which healthy seniors can live on their own but that do not offer assisted living or nursing services. Independent living communities can offer amenities such as transportation, security, yard maintenance, laundry service, group meals, and social and cultural activities.³⁴ Currently, there are over 200 senior independent living communities in Florida.³⁵

III. Effect of Proposed Changes:

The bill amends s. 400.235, F.S., to allow a nursing home that applies for the Nursing Home Gold Seal Program to demonstrate that its corporate entity as a whole meets the financial soundness and stability requirements for the program, rather than the nursing home on its own, if the nursing home is part of a:

- Continuing care retirement community that is not accredited; or
- A multifacility corporate entity that operates a combination of nursing homes, assisted living facilities, or independent living facilities.

The bill requires a nursing home that is part of a multifacility corporate entity to also submit a consolidated corporate financial statement to satisfy the financial soundness and stability requirement.

The bill is effective upon becoming law.

²⁷ Section 429.02(17), F.S.

²⁸ Section 429.02(1), F.S.

²⁹ Section 429.07(2), F.S. See also *Supra* note 22.

³⁰ Section 429.07(3)(c), F.S.

³¹ Section 429.075, F.S.

³² Section 429.07(3)(b), F.S.

³³ Agency for Health Care Administration, Florida Health Finder Search, facility/provider type: Assisted Living Facility and advanced search: Gold Seal Award Recipient, (search conducted Jan. 17, 2016), available at: <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Jan. 17, 2016).

³⁴ Senior Living.org, *Selecting an Independent Living Community*, (Feb. 14, 2011), available at: <http://www.seniorliving.org/lifestyles/independent-living-communities/> (last visited Dec. 22, 2015).

³⁵ According to the senior living search website, aPlaceforMom, *Independent Living in Florida*, available at: <http://www.aplaceformom.com/independent-living/florida> (last visited Nov. 20, 2015).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a positive fiscal impact on CCRCs that are not accredited and that have a nursing home component as well as corporate entities that operate multiple housing arrangements that wish to apply for the Nursing Home Gold Seal Program.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 542 refers to multifacility corporate entities that operate a combination of nursing homes, assisted living facilities, or independent living facilities. Since both nursing homes and assisted living facilities are licensed by the state, using the term “independent living facility” may cause some confusion as independent living facilities are not licensed entities and the term is not defined. Additionally, the term independent living services has a separate meaning in ch. 413, F.S., related to services provided for people with severe disabilities.³⁶ It may be advisable to use a more specific term, such as senior independent living community or facility for independent living, or to describe the living arrangements intended to be covered in the bill in order to avoid any confusion.

³⁶ Section 413.20(12), F.S.

VIII. Statutes Affected:

The bill substantially amends section 400.235 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on November 17, 2015:

The CS allows a nursing home applicant for the Nursing Home Gold Seal Program that is part of a multifacility corporate entity to submit a consolidated corporate financial statement to demonstrate financial soundness and stability rather than demonstrating that the nursing home meets those requirements separately.

- B. **Amendments:**

None.