

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 Children, Families, and Elder Affairs

BILL: CS/SB 542

INTRODUCER: Health Policy Committee and Senator Stargel

SUBJECT: Continuing Care Facilities

DATE: December 2, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

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 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 is not expected to have a fiscal impact on the state and will be effective upon becoming law.

II. Present Situation:

The Nursing Home Gold Seal Program

Section 400.235, F.S., creates the Nursing Home Gold Seal Program 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

¹ Section 400.235(2), F.S.

that has received such designation. Currently, there are 26 Gold Seal Program facilities located throughout the state.²

A nursing home that has been in operation for at least 30 months may apply for the Gold Seal Program if it has the recommendation of the Agency for Health Care Administration (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. Only nursing homes with a quality of care ranking within the top 15 percent of facilities regionally, or top 10 percent of facilities statewide, and that have a five-star facility designation overall are considered.³ Applicants must also meet the following requirements:

- The nursing home may not have any class I or class II deficiencies⁴ within the 30 months preceding the application for the program.
- Unless the nursing home is part of the same corporate entity as a licensed and accredited continuing care facility that meets liquid reserve requirements in s. 651.035, F.S., the nursing home must provide evidence of 30 months of financial soundness and stability including:⁵
 - Financial statements, 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
 - At least two of the following requirements:
 - A positive assets to liabilities ratio;
 - A positive tangible net worth; or
 - A times interest earned ratio of 115 percent.
- The nursing home or its parent company may not have been the subject of bankruptcy proceedings in the preceding 30 months.
- The nursing home must participate in a consumer satisfaction process and demonstrate that information is elicited from residents, family members, and guardians about satisfaction with the nursing home's facility, environment, services and care provided; staff's skills and interactions with residents; attention to resident's needs; and efforts to act on information gathered.
- The nursing home must provide evidence of the involvement of families and members of the community in the facility on a regular basis.
- The nursing home must have a stable workforce as evidenced by a low rate of turnover among certified nursing assistants (CNA) and licensed nurses within the preceding 30 months.
- The nursing home must provide evidence that verified complaints to the Long-Term Care Ombudsman Program have not resulted in citation within the preceding 30 months.
- The nursing home must provide targeted in-service training to meet the training needs identified by internal or external quality assurance efforts.

² Out of a total of 683 licensed nursing homes. Florida Health Finder Search on Nov. 12, 2015. Excel sheet on file with Senate Committee on Health Policy staff.

³ Both the ranking and the five-star facility designation are determined by the AHCA, see Rule 59A-4.202, F.A.C.

⁴ Class I and II deficiencies are defined in s. 408.813, F.S.

⁵ Rule 59A-4.203, F.A.C.

- A nursing home on conditional licensure may not qualify until the facility has operated for 30 months without a class I or class II deficiency and has undergone a regularly scheduled relicensure survey.

Gold Seal Program facilities are recommended to the Governor by the Governor's Panel on Excellence in Long-Term Care (Panel) which consists 13 members who are:

- Three appointees by the governor, one of whom must be a consumer advocate for senior citizens and the other two must have expertise in the fields of quality management, service delivery excellence, or public sector accountability;
- Three appointees by the Secretary of the Department of Elder Affairs (DOEA), which must include an active member of the nursing facility family and resident care council and a member of the University Consortium on Aging;
- A representative of the State Long-Term Care Ombudsman Program;
- One appointee from the Florida Life Care Residents Association;
- One appointee by the State Surgeon General;
- Two appointees by the Secretary of the AHCA;
- One appointee from the Florida Association of Homes for the Aging; and
- One appointee from the Florida Health Care Association.

Members of the Panel may not have any ownership interest in a nursing facility and, if the member is employed by a nursing facility, that member may not review or vote on recommendations involving that facility or any facility under common ownership.

Continuing Care Facilities

A continuing care facility, or CCRC, provides shelter and nursing care or personal services to residents upon the payment of an entrance fee.⁶ According to representatives, CCRCs generally feature apartment style independent living units, assisted living units, and nursing care, typically all on a single campus.⁷ Many also offer assisted living, memory support care, and other specialty care arrangements.⁸ These facilities also provide residents with dining options, housekeeping, security, transportation, social and recreational activities, and wellness and fitness programs.⁹ Continuing care facilities may offer at-home programs that provide residents CCRC services while continuing to live in their own homes until they are ready to move to the CCRC.¹⁰ 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.¹¹

⁶ Section 651.011, F.S.

⁷ Jane E. Zarem, Editor, *Today's Continuing Care Retirement Community*, CCRC Task Force, p. 2, (July 2010), available at http://www.leadingage.org/uploadedFiles/Content/Consumers/Paying_for_Aging_Services/CCRCcharacteristics_7_2011.pdf (last visited Nov. 20, 2015).

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 651.057, F.S.

¹¹ 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 Nov. 20, 2015).

As of September 2014, there are 71 licensed CCRCs in Florida. CCRCs are spread throughout the state, with Palm Beach, Sarasota, and Pinellas counties having the greatest numbers of these communities. Almost 25,000 residents lived in a CCRC during 2013.¹²

Oversight responsibility of is shared between the AHCA and the Office of Insurance Regulation (OIR). The AHCA regulates aspects of CCRCs related to the provision of health care such as assisted living, skilled nursing care, quality of care, and concerns with medical facilities. Because residents pay, in some cases, considerable amounts in entrance fees and ongoing monthly fees, there is a need to ensure that CCRCs are in the proper financial and managerial position to provide services to present and future residents. Accordingly, the OIR is given primary responsibility to authorize and monitor the operation of facilities and to determine facilities' financial status and the management capabilities of their managers and owners.¹³ If a continuing care provider is accredited through a process substantially equivalent to the requirements of chapter 651, F.S., the OIR may waive requirements of that chapter.¹⁴ Currently, CCRCs must be accredited by the National Continuing Care Accreditation Commission in order to obtain a waiver of examination and reporting requirements.¹⁵

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.¹⁶ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.¹⁷ Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.¹⁸

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility.¹⁹ The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria.²⁰ If, as determined by the facility administrator or health care provider, a resident no longer meets the criteria for continued residency or the facility is unable to meet the resident's needs, the resident must be discharged in accordance with the Resident Bill of Rights.²¹

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. In addition to a standard license, an ALF may have one or more specialty

¹² Office of Insurance Regulation, *Presentation to the Governor's Continuing Care Advisory Council*, (September 29, 2014) available at <http://www.floir.com/siteDocuments/CouncilPresentation.pdf> (last visited Nov. 20, 2015).

¹³ See ss. 651.021 and 651.023, F.S.

¹⁴ Section 651.028, F.S.

¹⁵ Rule 69O-193.055, F.A.C.

¹⁶ Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

¹⁷ Section 429.02(16), F.S.

¹⁸ Section 429.02(1), F.S.

¹⁹ For specific minimum standards see Fla. Admin. Code R 58A-5.0182.

²⁰ Section 429.26, F.S., and Fla. Admin. Code R 58A-5.0181.

²¹ Section 429.28, F.S.

licenses that allow the ALF to provide additional care. These specialty licenses include limited nursing services,²² limited mental health services,²³ and extended congregate care services.²⁴

Independent Living Communities

Independent living communities (ILF) are communities in which healthy seniors can live on their own but that do not offer assisted living or nursing services. Independent living communities do many times offer amenities such as transportation, security, yard maintenance, laundry service, group meals, and social and cultural activities.²⁵ Currently, there are 203 independent living communities in Florida and the average monthly cost for living in such a community is \$2,587.²⁶

III. Effect of Proposed Changes:

CS/SB 542 amends s. 400.235, F.S., to allow a nursing home applicant for the Nursing Home Gold Seal Program to demonstrate that its corporate entity as a whole meets the financial requirements for the program, rather than the nursing home on its own, if the nursing home is part of a CCRC that is not accredited or a multifacility corporate entity that operates a combination of nursing homes, ALFs, or ILFs.

The bill will become effective upon becoming law.

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.

²² Section 429.07(3)(c), F.S.

²³ Section 429.075, F.S.

²⁴ Section 429.07(3)(b), F.S.

²⁵ See <http://www.seniorliving.org/lifestyles/independent-living-communities/> (last visited Nov. 20, 2015).

²⁶ According to the senior living search website, *A Place for Mom*, available at <http://www.aplaceformom.com/independent-living/florida> (last visited Nov. 20, 2015).

B. Private Sector Impact:

CS/SB 542 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 by removing the requirement that such CCRCs or corporate entities create new and additional financial documentation for its nursing home component.

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.²⁷ 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.

VIII. Statutes Affected:

This 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.

²⁷ Section 413.20(12), F.S.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
