

STORAGE NAME: h0961.hcc.doc
DATE: April 19, 2001

**HOUSE OF REPRESENTATIVES
COUNCIL FOR
HEALTHY COMMUNITIES
ANALYSIS**

BILL #: HB 961
RELATING TO: Nursing Homes
SPONSOR(S): Representative(s) Carassas
TIED BILL(S): SB 1652

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELDER & LONG TERM CARE YEAS 11 NAYS 0
- (2) FISCAL POLICY & RESOURCES YEAS 12 NAYS 0
- (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 15 NAYS 0
- (4)
- (5)

I. SUMMARY:

HB 961 revises section 400.235, Florida Statutes, related to the Gold Seal program and the Governor's Panel on Excellence in Long Term Care, and section 400.4195, Florida Statutes, related to prohibition of commissions, kickbacks, rebates or other split-fee arrangements for referrals to assisted living facilities.

The bill increases the composition of the Panel from the current 13 members to 15 members and staggers the terms of the panel members. The bill increases the proportion of consumer advocates for senior citizens on the panel. The Florida Silver Hair Legislature and the Florida State Council of Senior Citizens would appoint the two additional proposed members of the panel. The chairperson would also be elected by a majority vote of the panel members. A consumer advocate for senior citizens would be appointed by the Secretary of the Agency for Health Care Administration (AHCA) to serve a 4-year term, removing the Secretary of AHCA from the panel. The AHCA Deputy Secretary for Medicaid would remain on the panel and serve an indefinite term. The bill also defines the term "consumer advocate for senior citizens." Costs to support the Panel will increase as a result of the increased membership.

The bill further provides conditions under which prohibition against payment of referral fees by assisted living facilities (ALFs) do not apply. Current law provides that it is unlawful for any ALF licensed under part III of Chapter 400 to contract or promise to pay or receive any commission, bonus, kickback, or rebate or engage in any split-fee arrangement in any form whatsoever with any physician, surgeon, organization, agency or person, either directly or indirectly, for residents referred to an ALF licensed under this part unless three conditions are met.

Note. The Committee on Elder & Long Term Care adopted four amendments, which are traveling with the bill. One of them modifies the bill's exception to the prohibition on commissions for relationships between assisted living facilities and independent marketing agencies, another changes the expiration date for the terms of panel members from 2001 to 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Panel on Excellence in Long Term Care was created by the 1999 Legislature as part of a major nursing home reform bill. The Panel was authorized to begin taking applications for the Gold Seal designation in January 1, 2000. To date, the Panel has not finalized in rule the criteria by which to accept and evaluate applications.

According to section 400.235(3)(a), Florida Statutes, the panel is presently composed of 13 members with appointment authority specified. The Deputy Secretary for Medicaid of AHCA and the State Long-Term Care Ombudsman are permanent members of the panel. The statute provides that vacancies on the panel shall be filled in the same manner as the original appointments.

Currently, section 400.4195, Florida Statutes, prohibits rebates and sets penalties for such activities as kickbacks, bonuses or any acts engaged in any split-fee arrangements in any form whatsoever with physicians, surgeons, organizations, agencies, or persons either directly or indirectly for residents referred to ALFs. Violation of this law is considered patient brokering and punishable as the law mandates in section 817.505, Florida Statutes.

C. EFFECT OF PROPOSED CHANGES:

The bill provides that the terms of all current appointments to the Panel shall expire on September 30, 2001. With the inclusion of two additional members, the panel will have a total of 15 members who will initially serve staggered terms. After the staggered terms are completed, the panel members shall be appointed to serve 4-year terms. The chairperson will be chosen by majority vote at the panel's first meeting after all panel members have been appointed. The Deputy Secretary for Medicaid of AHCA and the State Long-Term Care Ombudsman will continue to serve on the panel indefinitely. Five consumer advocates are designated for appointment to the Panel in addition to the State Long Term Care Ombudsman, a member of the Florida Silver Haired Legislature, a member of the Florida State Council of Senior Citizens, and a member of a nursing facility family and resident care council.

Section 2 of the bill amends s 400.4195 by creating an exception in the area of prohibited relationships for arrangements with independent marketing agencies. Assisted living facilities

(ALFs) would be allowed to contract with marketing agencies for marketing and referral services under a non-exclusive arrangement. The marketing agency must represent multiple facilities with different owners and must disclose all facilities they represent prior to referring the potential resident.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. The terms of all present panel members will expire on September 30, 2001 and the appointment of the new 15-member panel will be effective October 1, 2001. The appointment authorities to the new proposed panel are the same as present with the exception of an appointment from the Florida Silver Hair Legislature and the Florida State Council of Senior Citizens. The bill establishes a time limitation on panel members of 2 consecutive 4-year terms. Consumer advocates for senior citizens appointed to the panel could not receive wages from the nursing home industry or be employees of the Agency for Health Care Administration, the Department of Health or the Department of Elder Affairs.

Section 2. Amends section 400.4195, Florida Statutes, defining exceptions to the prohibited actions which otherwise would constitute a violation of the patient brokering provisions. These are (a) payment is made to an independent marketing agency that represents the facility under a non-exclusive contract; (b) the independent marketing agency represents multiple facilities with different owners; and (c) the independent marketing agency clearly indicates to referred residents, prior to referral, all facilities represented by the agency. The bill deletes the current language that specified who a facility could employ or contract with to market the facility.

Section 3. The effective date of the proposed bill is when it becomes law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

According to the Agency for Health Care Administration, the present Panel on Excellence in Long Term Care has a budget of \$26,000, which is funded through the Office of the Governor. In view of the proposed increase of panel membership to 15 members, the budget for the panel would need to increase to approximately \$30,000, a net increase of \$4,000. The Governor's recommended budget for the panel for FY 2001-2002 included continuation funding of approximately \$23,750.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 29, 2001, the Committee on Elder & Long Term Care adopted four amendments, which will travel with the bill, and reported the bill favorably.

Amendment # 1 changes the word "Director" to "Secretary" of AHCA.

Amendment # 2 changes "Director for State Health Purchasing" to "Secretary for Medicaid" of AHCA.

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Amendment #3 defines independent marketing agencies and modifies the bill's exception to the prohibition on commissions for relationships between assisted living facilities and independent marketing agencies.

Amendment #4 changes the expiration date for the terms of panel members from September 30, 2001 to September 30, 2002.

VII. SIGNATURES:

COMMITTEE ON ELDER & LONG TERM CARE:

Prepared by:

Melanie Meyer

Staff Director:

Tom Batchelor, Ph.D.

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Douglas Pile

Staff Director:

Greg Turbeville

AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Quinn Henderson

Council Director:

Mary Pat Moore