

By Representative Carassas

1 A bill to be entitled
2 An act relating to nursing homes and related
3 health care facilities; amending s. 400.235,
4 F.S.; revising membership and terms of the
5 Governor's Panel on Excellence in Long-Term
6 Care; providing for selection of a panel chair;
7 providing a definition; amending s. 400.4195,
8 F.S.; providing conditions under which the
9 prohibition against payment of referral fees by
10 assisted living facilities does not apply;
11 providing an effective date.

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13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. Paragraph (a) of subsection (3) of section
16 400.235, Florida Statutes, is amended to read:

17 400.235 Nursing home quality and licensure status;
18 Gold Seal Program.--

19 (3)(a)1. The Gold Seal Program shall be developed and
20 implemented by the Governor's Panel on Excellence in Long-Term
21 Care, which shall operate under the authority of the Executive
22 Office of the Governor. For the purposes of staggering the
23 terms of the panel members and notwithstanding the conditions
24 of the original appointments, the terms of all panel members
25 shall expire on September 30, 2003. The panel shall be
26 composed of the following members appointed effective October
27 1, 2003:

28 a. A consumer advocate for senior citizens, appointed
29 by the Governor, to serve a 4-year term.

30 b. Two persons with expertise in the fields of quality
31 management, service delivery excellence, or public-sector

- 1 accountability, appointed by the Governor, to serve 3-year
2 terms.
- 3 c. A consumer advocate for senior citizens, appointed
4 by the Secretary of Elderly Affairs, to serve a 4-year term.
- 5 d. An active member of a nursing facility family and
6 resident care council, appointed by the Secretary of Elderly
7 Affairs, to serve a 1-year term.
- 8 e. A member of the University Consortium on Aging,
9 appointed by the Secretary of Elderly Affairs, to serve a
10 2-year term.
- 11 f. The State Long-Term Care Ombudsman, to serve an
12 indefinite term.
- 13 g. A consumer advocate for senior citizens, appointed
14 by the Florida Life Care Residents Association, to serve a
15 3-year term.
- 16 h. A consumer advocate for senior citizens, appointed
17 by the Secretary of Health, to serve a 2-year term.
- 18 i. A consumer advocate for senior citizens, appointed
19 by the Secretary of Health Care Administration, to serve a
20 4-year term.
- 21 j. The Deputy Secretary for Medicaid of the Agency for
22 Health Care Administration, to serve an indefinite term.
- 23 k. One person appointed by the Florida Association of
24 Homes for the Aging, to serve a 1-year term.
- 25 l. One person appointed by the Florida Health Care
26 Association, to serve a 2-year term.
- 27 m. A member of the Florida Silver Hair Legislature
28 appointed by the Florida Silver Hair Legislature, to serve a
29 1-year term.
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1 n. A member of the Florida State Council of Senior
2 Citizens appointed by the Florida State Council of Senior
3 Citizens, to serve a 2-year term.

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5 Thereafter, all panel members except those appointed under
6 subparagraphs f. and j. shall be appointed to serve 4-year
7 terms.~~The panel shall be composed of three persons appointed~~
8 ~~by the Governor, to include a consumer advocate for senior~~
9 ~~citizens and two persons with expertise in the fields of~~
10 ~~quality management, service delivery excellence, or public~~
11 ~~sector accountability; three persons appointed by the~~
12 ~~Secretary of Elderly Affairs, to include an active member of a~~
13 ~~nursing facility family and resident care council and a member~~
14 ~~of the University Consortium on Aging; the State Long-Term~~
15 ~~Care Ombudsman; one person appointed by the Florida Life Care~~
16 ~~Residents Association; one person appointed by the Secretary~~
17 ~~of Health; two persons appointed by the Secretary of Health~~
18 ~~Care Administration; one person appointed by the Florida~~
19 ~~Association of Homes for the Aging; and one person appointed~~
20 ~~by the Florida Health Care Association.~~Vacancies on the panel
21 shall be filled in the same manner as the original
22 appointments. A panel member may not be appointed to serve
23 more than two consecutive 4-year terms.

24 2. Panel members shall select the panel chair by a
25 majority vote at the panel's first meeting after all panel
26 members have been appointed.

27 3. For purposes of this paragraph, the term "consumer
28 advocate for senior citizens" means a person who:

29 a. Receives no money from the nursing home industry in
30 the form of wages, contributions, or gifts and has no
31 relatives who receive such wages, contributions, or gifts;

1 b. Is not an employee of the Agency for Health Care
2 Administration, the Department of Health, or the Department of
3 Elderly Affairs; and

4 c. Is either a member of an organized senior advocacy
5 group or has had or currently has a relative in a nursing
6 home.

7 Section 2. Section 400.4195, Florida Statutes, is
8 amended to read:

9 400.4195 Rebates prohibited; penalties.--

10 (1) Except as provided in subsection (2), it is
11 unlawful for any assisted living facility, or any person or
12 agency employed by or contracting with the facility, ~~licensed~~
13 ~~under this part~~ to contract or promise to pay or receive any
14 commission, bonus, kickback, or rebate or engage in any
15 split-fee arrangement in any form whatsoever with any health
16 care practitioner, health care facility, or other ~~physician,~~
17 ~~surgeon,~~ organization, agency, or person, either directly or
18 indirectly, for residents referred to an assisted living
19 facility ~~licensed under this part.~~

20 (2) A facility may employ or contract with persons or
21 agencies to market the facility for a fee or commission based
22 on the volume or value of referrals to the facility, provided
23 that:

24 (a) The facility is not subject to the provisions of
25 42 U.S.C. s. 1320a-7b;

26 (b) Payment to the contract provider is made under a
27 nonexclusive contract;

28 (c) The contract provider represents multiple
29 facilities with different owners;

30 (d) The employee or contract provider clearly
31 indicates to all clients prior to referral that he or she

1 represents the facility, in addition to all other facilities
2 represented by the person or agency; and

3 (e) The employee or contract provider also is not a
4 health care practitioner in a position to make referrals to an
5 assisted living facility or employed by a health care facility
6 or any other organization or agency in a position to make
7 referrals to an assisted living facility or does not have an
8 ownership interest in an assisted living facility.

9 (3) A person or agency independent of and not under
10 contract with a ~~the~~ facility may provide placement or referral
11 services for a fee to individuals seeking assistance in
12 finding a suitable facility; however, any fee paid for
13 placement or referral services must be paid by the individual
14 looking for a facility, not by the facility.

15 (4)~~(2)~~ A violation of this section shall be considered
16 patient brokering and is punishable as provided in s. 817.505.

17 Section 3. This act shall take effect upon becoming a
18 law.

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21 HOUSE SUMMARY

22 Revises membership and terms of the Governor's Panel on
23 Excellence in Long-Term Care. Provides for selection of a
24 panel chair. Revises provisions which prohibit rebates
25 for referral of residents to assisted living facilities.
26 Specifies conditions under which a facility may employ or
27 contract with persons to market the facility for a fee or
28 commission.
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