

By the Committee on Governmental Oversight and Productivity;
and Senator Crist

302-1805-02

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 office
5 of the Governor's Panel on Excellence in
6 Long-Term Care; providing for selection of a
7 panel chairperson; amending s. 400.4195, F.S.;
8 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.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
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. The panel shall be composed of the
23 following members:

24 a. A consumer advocate for senior citizens, appointed
25 by the Governor.

26 b. Two persons having expertise in the field of
27 quality management, service-delivery excellence, or
28 public-sector accountability, appointed by the Governor.

29 c. A consumer advocate for senior citizens, appointed
30 by the Secretary of Elderly Affairs.

31

1 d. An active member of a nursing facility family and
2 resident care council, appointed by the Secretary of Elderly
3 Affairs.

4 e. A member of the University Consortium on Aging,
5 appointed by the Secretary of Elderly Affairs.

6 f. The State Long-Term Care Ombudsman.

7 g. A consumer advocate for senior citizens, appointed
8 by the Florida Life Care Residents Association.

9 h. A consumer advocate for senior citizens, appointed
10 by the Secretary of Health.

11 i. A consumer advocate for senior citizens, appointed
12 by the Secretary of the Agency for Health Care Administration.

13 j. The Deputy Secretary for Medicaid of the Agency for
14 Health Care Administration.

15 k. One person appointed by the Florida Association of
16 Homes for the Aging.

17 l. One person appointed by the Florida Health Care
18 Association.

19 m. A member of the Florida Silver Hair Legislature,
20 appointed by the Florida Silver Hair Legislature.

21 n. A member of the Florida Alliance for Retired
22 Americans, appointed by the Florida Alliance for Retired
23 Americans.

24 o. An elder-law attorney appointed by The Florida Bar.

25
26 Persons serving on the panel on the effective date of this act
27 shall continue to serve and persons shall be appointed
28 according to the criteria described in sub-subparagraphs m.,
29 n., and o. for terms beginning October 1, 2002; however, for
30 the dual purpose of staggering the terms of the members and
31 maintaining continuity, the terms of the panel members serving

1 on the effective date of this act who were appointed according
2 to the criteria described in sub-subparagraphs b., d., g., i.,
3 and k. expire September 30, 2002, and terms of the panel
4 members serving on the effective date of this act who were
5 appointed according to the criteria described in
6 sub-subparagraphs a., c., e., h., and l. expire September 30,
7 2003. Thereafter, each appointive member shall be appointed
8 for a 4-year term in the same manner as the original
9 appointment. A person may not be appointed to serve more than
10 two consecutive 4-year terms. However, an appointee serving on
11 the effective date of this act is not eligible for
12 reappointment.

13 2. Panel members shall select the panel chairperson to
14 serve a 3-year term by a majority vote at the panel's first
15 meeting after all panel members have been appointed.

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

18 a. Does not receive more than 20 percent of his or her
19 personal income from any business involved in the delivery of
20 long-term care services, from any attorney or law firm that
21 represents nursing home facilities or nursing home residents
22 in personal injury actions, or from any affiliated membership
23 organizations or corporations;

24 b. Is not an employee of the Agency for Health Care
25 Administration, the Department of Health, or the Department of
26 Elderly Affairs; and

27 c. Is either a member of an organized senior advocacy
28 group or has had or currently has a relative in a nursing
29 home. ~~three persons appointed by the Governor, to include a~~
30 ~~consumer advocate for senior citizens and two persons with~~
31 ~~expertise in the fields of quality management, service~~

1 ~~delivery excellence, or public sector accountability; three~~
2 ~~persons appointed by the Secretary of Elderly Affairs, to~~
3 ~~include an active member of a nursing facility family and~~
4 ~~resident care council and a member of the University~~
5 ~~Consortium on Aging; the State Long-Term Care Ombudsman; one~~
6 ~~person appointed by the Florida Life Care Residents~~
7 ~~Association; one person appointed by the Secretary of Health;~~
8 ~~two persons appointed by the Secretary of Health Care~~
9 ~~Administration; one person appointed by the Florida~~
10 ~~Association of Homes for the Aging; and one person appointed~~
11 ~~by the Florida Health Care Association. Vacancies on the panel~~
12 ~~shall be filled in the same manner as the original~~
13 ~~appointments.~~

14 Section 2. Section 400.4195, Florida Statutes, is
15 amended to read:

16 400.4195 Rebates prohibited; penalties.--

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

27 (2) A facility may employ or contract with persons or
28 agencies to market the facility for a fee or commission based
29 on the volume or value of referrals to the facility, provided
30 that:

31

1 (a) The facility is not subject to the provisions of
2 42 U.S.C. s. 1320a-7b;

3 (b) Payment to the contract provider is made under a
4 nonexclusive contract;

5 (c) The contract provider represents multiple
6 facilities with different owners;

7 (d) The employee or contract provider clearly
8 indicates to all clients prior to referral that he or she
9 represents and is being compensated by the facility, in
10 addition to all other facilities represented by the person or
11 agency; and

12 (e) The employee or contract provider also is not a
13 health care practitioner in a position to make referrals to an
14 assisted living facility or employed by a health care facility
15 or any other organization or agency in a position to make
16 referrals to an assisted living facility or does not have an
17 ownership interest in an assisted living facility.

18 (3) A person or agency independent of and not under
19 contract with a ~~the~~ facility may provide placement or referral
20 services for a fee to individuals seeking assistance in
21 finding a suitable facility; however, any fee paid for
22 placement or referral services must be paid by the individual
23 looking for a facility, not by the facility.

24 (4)(2) A violation of this section shall be considered
25 patient brokering and is punishable as provided in s. 817.505.

26 Section 3. This act shall take effect upon becoming a
27 law.

28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 276

Modifies terms of Governor's Panel on Excellence in Long-Term Care.

Provides for staggered terms of panel members.

Limits appointments to no more than two consecutive 4-year terms.

Prohibits appointees serving on effective date of act from being reappointed.