

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 127 Continuing Care Facilities  
**SPONSOR(S):** Health Innovation Subcommittee; Cummings  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	11 Y, 0 N, As CS	Guzzo	Poche
2) Health & Human Services Committee	11 Y, 0 N	Guzzo	Calamas

### SUMMARY ANALYSIS

The Gold Seal Program (Program) is a recognition process and award program for nursing homes that demonstrate excellence in long-term care over a sustained period of time. Recipients of the Gold Seal Award (Award) may use the designation in their advertising and marketing. Of the 684 currently licensed nursing homes in Florida, 25 nursing homes hold the award.

A nursing home that wishes to be considered for the Award must submit an application to the Agency for Health Care Administration (AHCA). The Governor's Panel on Excellence in Long-Term Care reviews the applications and makes recommendations to the Governor for final approval of the Award.

To be considered for the Award, a nursing home must be licensed and operating for at least 30 months and must provide evidence of financial soundness and stability during the 30 months preceding application submission. To demonstrate the financial soundness requirement an applicant must:

- Submit a balance sheet, income statement, and a statement of cash flow for the three consecutive years immediately preceding the application;
- Submit a report from a certified public accountant who has audited or reviewed such financial statements; and
- Meet two of the following three requirements;
  - Have a positive assets to liabilities ratio;
  - Have a positive tangible net worth; or
  - Have a times interest earned ratio of at least 115 percent.

A nursing home that is part of the same corporate entity as a continuing care facility licensed under Chapter 651, F.S., can meet the financial soundness and stability requirement if:

- The facility meets the minimum liquid reserve requirements in s. 651.035, F.S.; and
- The facility is accredited by an organization recognized under statute and OIR rule, as long as the accreditation is not provisional.

CS/HB 127 provides two additional options for a nursing home to satisfy the financial soundness and stability requirement of the Program. First, the bill permits a nursing home which is part of an unaccredited continuing care facility to demonstrate that the facility, in its entirety, meets AHCA financial standards as proof of financial soundness and stability for purposes of qualifying for the Program. Second, the bill allows a nursing home that is part of a corporate entity that operates nursing homes, assisted living facilities, or independent living facilities to satisfy the financial soundness and stability requirement by submitting a consolidated corporate financial statement to AHCA and demonstrating that the corporate entity, in its entirety, meets the financial standards established by AHCA.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Nursing Homes and Continuing Care Facilities

Nursing homes are regulated by the Agency for Health Care Administration (AHCA) under the Health Care Licensing Procedures Act (Act) in part II of chapter 408, F.S., which contains uniform licensing standards for 29 provider types including nursing homes. In addition, nursing homes must comply with the requirements contained in the individual authorizing statutes of part II of chapter 400, F.S., which includes unique provisions for licensure beyond the uniform criteria.

A continuing care facility is a facility that offers a continuum of services at a single location including skilled nursing care, independent living, assisted living, and memory support. Oversight of continuing care facilities is primarily shared between AHCA and the Office of Insurance Regulation (OIR), pursuant to ch. 651, F.S. ("the Act"). AHCA regulates aspects of continuing care facilities related to the provision of health care such as skilled nursing care, assisted living, quality of care, and concerns with medical facilities.

The Act gives OIR primary responsibility of licensing continuing care facilities, examining them for compliance with applicable laws and rules, and monitoring their financial condition for the protection of the public from insolvency risks and unethical practices.<sup>1</sup> In addition, the Department of Financial Services shares some solvency regulatory authority with OIR.<sup>2</sup>

##### Nursing Home Gold Seal Program

The Gold Seal Program (Program) was established in 1999 to develop an award and recognition program for nursing homes that demonstrate excellence in long-term care over a sustained period of time.<sup>3</sup> Recipients of the Gold Seal Award (Award) may use the designation in their advertising and marketing.<sup>4</sup> Of the 684 currently licensed nursing homes in Florida<sup>5</sup>, 25 nursing homes hold the Award.<sup>6</sup>

##### *Governor's Panel on Excellence in Long-Term Care*

The Program is implemented by the Governor's Panel on Excellence in Long-Term Care (Panel) which is administratively housed within the Executive Office of the Governor.<sup>7</sup> The Panel consists of 13 members, including:

- Three members appointed by the Governor, including a consumer advocate for senior citizens and two persons with expertise in the fields of quality management, service delivery excellence, or public sector accountability;

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<sup>1</sup> Office of Insurance Regulation, *Specialty Product Administration*, available at [http://www.flor.com/Sections/Specialty/is\\_sp\\_index.aspx](http://www.flor.com/Sections/Specialty/is_sp_index.aspx) (last viewed January 7, 2016).

<sup>2</sup> S. 651.114(6), F.S., provides that OIR and the Department of Financial Services may intervene in continuing care facilities with all the necessary powers and duties they possess under the provisions of the Insurers Rehabilitation and Liquidation Act in part I of ch. 631, F.S.

<sup>3</sup> House Bill 1971, 1999 Florida Legislative Session, and ch. 99-394, Laws of Fla.

<sup>4</sup> S. 400.235(8)(a), F.S.

<sup>5</sup> Agency for Health Care Administration, *Facility Provider Locator; General Search, by Facility/Provider Type; Nursing Homes*, available at <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last viewed January 7, 2016).

<sup>6</sup> Agency for Health Care Administration, *Facility Provider Locator; General Search, by Facility/Provider Type; Nursing Homes; Advanced Search, Gold Seal Award Recipient*, available at <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last viewed January 7, 2016).

<sup>7</sup> S. 400.235(3)(a), F.S.

- Three members appointed by the Secretary of Elder Affairs, including an active member of a nursing facility family and resident care council, a member of the University Consortium on Aging, and a representative of the State Long-Term Care Ombudsman Program;
- Two members appointed by the Secretary of the Agency for Health Care Administration (AHCA);
- One member appointed by the Florida Life Care Residents Association;
- One member appointed by the State Surgeon General; and
- One member appointed by the Florida Health Care Association.<sup>8</sup>

An individual with any ownership interest in a nursing home is prohibited from becoming a member of the Panel. Any member of the Panel who is employed by a nursing home in any capacity is prohibited from reviewing or voting on recommendations involving the facility by which the member is employed or any facility under common ownership with the facility.<sup>9</sup>

#### *Program Requirements - General*

To be considered for the Award, a nursing home must have a letter of recommendation from AHCA, a nursing home industry organization, a consumer, the State Long-Term Care Ombudsman Program, or a member of the community where the nursing home is located.<sup>10</sup> The nursing home must then submit the letter of recommendation and a completed application with supporting documentation to AHCA.<sup>11</sup> 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<sup>12</sup> overall are considered.<sup>13</sup>

In addition, applicants must meet the following criteria:

- Have no Class I or Class II deficiencies within the 30 months preceding the application for the Program;
- Participate in a consumer satisfaction process involving residents, family members and guardians;
- Provide evidence of the involvement of families of residents 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 reported to the State Long-Term Care Ombudsman Program within the 30 months preceding application for the program have not resulted in a citation for licensure; and
- Provide targeted in-service training.<sup>14</sup>

<sup>8</sup> Id.

<sup>9</sup> S. 400.235(3)(b), F.S.

<sup>10</sup> S. 400.235(6), F.S.

<sup>11</sup> Rule 59A-4.201(1), F.A.C.

<sup>12</sup> S. 400.191 F.S., requires AHCA to provide information to the public in consumer-friendly printed and electronic formats to assist consumers and their families in comparing and evaluating nursing home facilities. AHCA publishes a Nursing Home Guide, which includes facility-specific comparative information based on certain quality and performance measures, including a star ranking based upon deficiencies cited during inspections. The more stars (up to 5), the better the facility scored on that particular measure. The broadest measure of performance is Overall Inspection, available at <http://www.floridahealthfinder.gov/CompareCare/MethodologyNH.aspx> (last viewed January 7, 2016).

<sup>13</sup> Rule 59A-4.202, F.A.C.

<sup>14</sup> S. 400.235(5), F.S.

## *Program Requirements – Financial Soundness and Stability*

An applicant for the Award is required to provide evidence of financial soundness and stability.<sup>15</sup> The financial soundness and stability requirements differ based on whether or not a nursing home is part of the same corporate entity as a continuing care facility.<sup>16</sup>

A nursing home that is not part of the same corporate entity as a continuing care facility is required to be licensed and operating for at least 30 months prior to the date of application submission and must provide evidence of financial soundness and stability during the 30 months preceding application submission.<sup>17</sup> To demonstrate financial soundness and stability, a nursing home must:

- Submit a balance sheet, income statement, and a statement of cash flow for the three consecutive years immediately preceding the application;
- Submit a report from a certified public accountant who has audited or reviewed such financial statements; and
- Meet two of the following three requirements;
  - Have a positive assets to liabilities ratio;
  - Have a positive tangible net worth; or
  - Have a times interest earned ratio<sup>18</sup> of at least 115 percent.<sup>19</sup>

A nursing home that is part of the same corporate entity as a continuing care facility demonstrates financial soundness and stability if:

- The facility meets the minimum liquid reserve requirements in s. 651.035, F.S.; and
- The facility is accredited by an organization recognized under statute and OIR rule<sup>20</sup>, as long as the accreditation is not provisional.<sup>21</sup>

If a facility is accredited without stipulations or conditions by a process substantially equivalent to the requirements of Chapter 651, F.S., OIR may waive any requirement of Chapter 651, F.S., including the minimum liquid reserve requirements.<sup>22</sup>

Presently, a continuing care facility must maintain a statutorily-prescribed minimum liquid reserve under s. 651.035, F.S. The reserve is comprised of three separate reserves based on separate calculations. The first is the “debt service reserve,” which is an amount equal to the aggregate amount of all principal and interest payments due during the fiscal year on any mortgage loan or other long term financing of the facility, including taxes and insurance.<sup>23</sup>

The second is the “operating reserve,” represented as a function of a provider’s total operating expenses. Each facility must maintain in reserve an amount equal to 30 percent of the total projected operating expenses for the first 12 fiscal months of operation, and 15 percent thereafter. Where a facility has been in operation for more than 12 months, the total operating expenses is determined by averaging the total annual operating expenses reported to OIR by the number of annual reports filed with OIR within the immediate preceding 3-year period.

The third is the “renewal and replacement reserve,” which is equal to 15 percent of the total accumulated depreciation based on the audited financial statement of a facility, but not to exceed 15

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<sup>15</sup> Id.

<sup>16</sup> S. 400.235(5)(b), F.S.

<sup>17</sup> Rule 59A-4.203, F.A.C.

<sup>18</sup> A times interest earned ratio is determined by dividing interest expense into net income before deducting such interest and income tax. Net income is defined as revenues less expenses.

<sup>19</sup> Rule 59A-4.203, F.A.C.

<sup>20</sup> Rule 69O-193.055(1)(a), F.A.C., recognizes the National Continuing Care Accreditation Commission.

<sup>21</sup> S. 400.235(5)(b), F.A.C.

<sup>22</sup> S. 651.028, F.S.

<sup>23</sup> S. 651.035(1)(a), F.S.

percent of the facility's average operating expenses for the past 3 fiscal years based on a facility's audited financial statement for each year.

### **Effect of Proposed Changes**

For a nursing home which is part of a continuing care facility to qualify for the Program, current law requires the facility to meet the minimum liquid reserve requirements of s. 651.035, F.S., and be accredited by a recognized accrediting organization to satisfy the financial soundness and stability requirement of the Program.

CS/HB 127 provides two additional options for a nursing home to satisfy the financial soundness and stability requirement of the Program. First, the bill permits a nursing home which is part of an unaccredited continuing care facility to demonstrate that the facility, in its entirety, meets AHCA financial standards as proof of financial soundness and stability for purposes of qualifying for the Award. Second, the bill allows a nursing home that is part of a corporate entity that operates nursing homes, assisted living facilities, or independent living facilities to satisfy the financial soundness and stability requirement by:

- Submitting a consolidated corporate financial statement to AHCA; and
- Demonstrating that the corporate entity, in its entirety, meets the financial standards established by AHCA.

The bill potentially allows more nursing homes to qualify for the Program.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 400.235, F.S., relating to nursing home quality and licensure status; Gold Seal Program.

**Section 2:** Provides an effective date of upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on unaccredited facilities that offer skilled nursing care and wish to apply for the Program by providing an alternative means to meet the financial soundness and stability requirement.

The bill may also have a positive fiscal impact on nursing homes that are part of corporate entities that operate a combination of nursing homes, assisted living facilities, or independent living facilities. Such nursing homes can meet the financial soundness and stability requirements of the Program by submitting a consolidated corporate financial statement to AHCA and demonstrating that the corporate entity, in its entirety, meets the financial standards established by AHCA. A nursing home that could not meet the financial soundness and stability standards on its own may become eligible for the Program as a result of the financial performance of other facilities owned by the corporate entity. In addition, the corporate entity will only incur the expenses resulting from the single consolidated corporate financial statement.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On December 2, 2015, the Health Innovation Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment authorized a nursing home that is part of a corporate entity that operates nursing homes, assisted living facilities, or independent living facilities to satisfy the financial soundness and stability requirement of the Program by submitting a consolidated corporate financial statement to AHCA and demonstrating that the corporate entity, in its entirety, meets the financial standards established by AHCA.

The analysis is drafted to the committee substitute as passed by the Health Innovation Subcommittee.