

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 Health Regulation Committee

BILL: CS/SB 1668

INTRODUCER: Health Regulation Committee and Senator Jones

SUBJECT: Long-term care facilities

DATE: April 17, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Wilson	HR	Fav/CS
2.			CF	
3.			BI	
4.			HA	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The committee substitute creates the “Long-Term Care Transparency Act.” It revises nursing home and assisted living facility (ALF) licensure provisions to require more information to be submitted to the Agency for Health Care Administrative (Agency) related to the extended ownership of nursing homes and ALFs and expands the regulatory oversight of the Agency to the extended entities involved in ownership of these facilities.

Applications for an initial nursing home license require disclosure of the applicant’s governing body, affiliates, controlling entities, or any entity having a controlling financial interest in the applicant as well as the extent of the financial or ownership interest. An applicant must provide proof of financial ability to operate; a copy of contracts with affiliates or controlling entities; regulatory investigation or enforcement documents related to the receipt of Medicaid or Medicare funds; and certain civil judgments for the applicant, affiliates or controlling entities.

Applications for an initial ALF license require disclosure of the applicant’s affiliates, controlling entities, or any entity having a controlling financial interest in the applicant. An applicant must also provide a copy of contracts with affiliates or controlling entities, and regulatory

investigation or enforcement documents related to Medicaid or Medicare for the applicant, affiliates or controlling entities.

A nursing home must disclose if certain entities held by any affiliate, controlling entity, or entity having a controlling financial interest in the applicant or licensee have closed, have filed for bankruptcy, been in receivership, or had regulatory action to deny, suspend, revoke a license, or action enjoined.

Regulatory enforcement action is extended to a controlling entity or an entity having a controlling financial interest in the licensee.

A nursing home or ALF is prohibited from using liability insurance for litigation costs or attorney's fees and these licensed facilities are required to notify the Agency if policy limits or annual aggregate liability coverage has been exhausted.

The Agency is required to disclose on its website additional information about a nursing home facility's administrator; members of the facility's governing body, affiliates, controlling entities, and entities having a controlling financial interest; and documentation related to audits, investigations, or fines.

In addition to the Agency posting change of ownership information received on its website, a nursing home or ALF licensee must notify all residents of an ownership change and post this information on the facility's Internet site within five days after submitting the request for a change of ownership to the Agency. Affected parties are authorized to submit information to the Agency for consideration in evaluating the change of ownership request. The Agency is authorized to investigate matters related to the change of ownership.

Upon granting a change of ownership for a nursing home or ALF, the new licensee assumes the liabilities of the prior licensee, affiliates, and controlling entities of the prior licensee related to or arising out of the operation of the facility and services provided at the facility.

This bill substantially amends the following sections of the Florida Statutes: 400.021, 400.0239, 400.071, 400.102, 400.111, 400.121, 400.141, 400.191, 429.02, 429.11, 429.12, 429.14, 429.174, and 429.275. The bill creates a new section 400.197, F.S., and one undesignated section of law.

II. Present Situation:

Nursing Homes

Nursing homes are licensed and regulated by the Agency under part II of ch. 400, F.S., part II of ch. 408, F.S., and Chapter 59A-4, Florida Administrative Code (F.A.C.). Nursing homes provide long term and sub-acute care to persons in need of 24-hour nursing services or significant supportive services. Nursing home residents are generally frail, physically and psychosocially compromised, heavily dependent upon others for basic care and sustenance, and in some cases near the end of their lives. When residents live in an environment where they are totally dependent on others, they are especially vulnerable to abuse, neglect, and exploitation.

The quality of care and quality of life for residents of nursing homes have been a concern for decades. Nursing home regulation has evolved over the past 20 years at the state and federal levels. In February 2001, the Committee on Health, Aging and Long-Term Care in the Florida Senate published Interim Project Report 2001-025, *Long-Term Care Affordability and Availability*.¹ This report lays out the historical landscape and challenges of long-term care in Florida as it existed in the early part of this decade. Generally, the nursing home system in Florida was near crisis with increasing litigation and adverse judgments, spiraling liability insurance premiums or the inability to obtain liability coverage from regulated carriers, financial instability of nursing homes, and concerns regarding the quality of care that patients were receiving and prospective care based on increasingly more complex resident needs. Chapter 2001-45, Laws of Florida (L.O.F.), stemming in part from the Interim Project Report 2001-025, represented a significant overhaul of the long-term care system in Florida.

Assisted Living Facilities

The ALFs are licensed and regulated by the Agency under part I of ch. 429, F.S., part II of ch. 408, F.S., and Chapter 59A-5, F.A.C.

The ALFs provide housing, meals, personal care services, and supportive services to older persons and disabled adults who are unable to live independently. They are intended to be an alternative to more restrictive, institutional settings for individuals who need housing and supportive services, but who do not need 24-hour nursing supervision. Generally, the ALFs provide supervision, assistance with personal care services, such as bathing, dressing, eating, and assistance with or administration of medications.

The ALFs are licensed to provide routine personal care services under a standard license, or more specific services under the authority of various specialty licenses. The purpose of specialty licenses is to allow individuals to “age in place” in familiar surroundings that can adequately and safely meet their continuing healthcare needs.

Ownership of Nursing Homes and ALFs

A company or organization must have a license to operate a nursing home in Florida. The licensee might not be the owner of the actual physical property/building, although the licensee must have a legal right to occupy the property, such as a lease. The licensee may also contract with a management company to run the day-to-day operations of the nursing home, but the licensee remains responsible for the operation. However, the licensee is legally responsible for all aspects of the provider operation.²

Licensure laws for all health care providers regulated by the Agency³ require disclosure of “controlling interests.” Controlling interest is defined as:

¹ The Florida Senate Interim Project Report 2001-025, *Long-Term Care Affordability and Availability*, may be found at <http://www.flsenate.gov/data/Publications/2001/Senate/reports/interim_reports/pdf/2001-025hc.pdf> (Last visited on March 29, 2008).

² S. 408.803(9), F.S.

³ Part II of ch. 408, F.S.

- The applicant or licensee;
- A person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater ownership interest in the applicant or licensee; or
- A person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider.
- The term does not include a voluntary board member.

Controlling interest disclosure does not reach beyond interest in the licensee or management company, therefore it does not reveal extended relationships to other entities that may be several layers beyond the nursing home ownership level.⁴

Controlling interest information must be reported at the time of initial licensure application, renewal of a license, and upon a change of ownership or management company. A change of ownership is an event in which the licensee changes to a different legal entity or in which 45 percent or more of the ownership, voting shares, or controlling interest in a corporation whose shares are not publicly traded on a recognized stock exchange is transferred or assigned, including the final transfer or assignment of multiple transfers or assignments over a 2-year period that cumulatively total 45 percent or greater. A change solely in the management company or board of directors is not a change of ownership.⁵

There has been a transition of nursing home ownership over the past decade to shift from a model of common licensee for all related facilities, to separate smaller organizations (corporations or limited liability corporations) for each facility. If a licensee's relationship to other facilities is limited by the establishment of multiple smaller corporations or limited liability corporations, the definition of controlling interest may prohibit Agency consideration of poor health care provider operations by related subsidiaries.⁶

Analyses indicate that the nursing home industry over the past 12 years was a dynamic one marked by extensive acquisitions, mergers, bankruptcies, and divestitures⁷. Some of the trends have unclear implications for the quality of care received by nursing home residents. For example, it is unclear whether the current trend toward Real Estate Investment Trust (REIT) financing has any implications for nursing home quality. Although the same entities may remain as operators, the landlords from which they rent have strategic interests that are separate from the health care mission of their tenants. If a REIT seeks increased rent payments, the nursing home operator could be constrained in its ability to meet increased costs. In particular, the profit and loss model of a nursing home is relatively fixed, with limited places to seek additional resources (e.g., lower insurance costs, reduced operating expenses, and reduced capital expenditures). In

⁴ AHCA's White Paper, *Long Term Care Review: Florida Nursing Homes Regulation, Quality, Ownership, and Reimbursement* published October 2007, on page 16, found at: <<http://ahca.myflorida.com/LTCwhitepaper.shtml>> (Last visited on March 29, 2008).

⁵ S. 408.803(5), F.S.

⁶ *Supra* 4, on page 17.

⁷ U.S. Department of Health and Human Services *Nursing Home Divestiture and Corporate Restructuring: Final Report* published December 2006, on page 13, found at: <<http://aspe.hhs.gov/daltcp/reports/2006/NHdivest.htm>> (Last visited on March 29, 2008).

addition, because of the highly leveraged structure of this arrangement, operators can be vulnerable to future negative impacts from reimbursement changes.

Another side-effect of separating real estate assets from operations is that it reduces the assets available to potential litigants, possibly reducing incentives for plaintiffs and their attorneys to bring lawsuits. In fact, the trends toward REIT financing and those of incorporating individual facilities as separate entities can be undertaken primarily to address litigation exposure.⁸

The Agency has indicated that it processed 166 and 189 ALF changes in ownership applications and 41 and 83 changes in ownership applications for nursing homes in 2006 and 2007, respectively.

Liability Insurance and Litigation

Chapter 2001-45, L.O.F., was enacted in response to the quality of care issues for nursing home residents and the nursing home liability insurance crisis facing Florida in the 1990s. By the late 1990s, most commercial insurers had stopped selling professional liability coverage to a large number of nursing home operators in the state. One of the policy objectives of this legislation was to limit both the frequency and severity of nursing home claims. Evidence of the effect of this legislation on reducing the frequency and severity of nursing home lawsuits is mixed.⁹

Nursing homes and ALFs are required to maintain general and professional liability insurance, however no minimum coverage amounts or policy limits are required.¹⁰ Many facilities have chosen to buy finite policies with extremely low coverage limits.¹¹

Initially, there were few carriers to provide the required insurance coverage. However, the market has changed and currently nursing homes can purchase general and professional liability insurance in Florida from carriers such as AIG, Alliance Healthcare (Red Mountain Insurance Company), American Safety, CAN, Lloyd's of London, OneBeacon, and risk retention groups (RRGs), such as Ponce de Leon RRG, to name a few.¹² The RRGs provide general and professional liability insurance to long-term care facilities throughout the United States. The RRGs are companies whose stockholders are owners of skilled nursing and assisted living facilities.

The Agency began collecting information from nursing homes regarding civil litigation in May 2001. A Notice of Intent (NOI) is required to notify the facility licensee of a plaintiff's intent to sue for some cause of action. Once initiated, cases may be withdrawn, settled or move forward to litigation. The number of nursing homes that reported at least one NOI fell from 60 percent to 29 percent between fiscal year 2001-2002 and 2006-2007.¹³

⁸ *Ibid.*

⁹ U.S. Department of Health and Human Services *The Nursing Home Liability Insurance Market: A Case Study of Florida* published June 2006, available at: <<http://aspe.hhs.gov/daltcp/reports/2006/NHliab-FL.htm>> (Last visited on March 29, 2008).

¹⁰ See s. 400.141(2), F.S., for nursing homes and ss. 429.11 and 429.275, F.S., for ALFs.

¹¹ *Supra* 9.

¹² Per Sandy Elsass, President of Uni-Ter Group, administrator of the Ponce de Leon LTC Risk Retention Group, Inc., on March 20, 2008. See also <www.ponedeleonrrg.com> (Last visited on March 29, 2008).

¹³ *Supra* 4.

Other Licensure Disclosures

Nursing homes must disclose any financial or ownership interest that a controlling interest has held in the last 5 years in any other health care or resident care entity that has:

- Closed, voluntarily or involuntarily;
- Filed for bankruptcy;
- Had a receiver appointed;
- Had a license denied, suspended or revoked; or
- Had an injunction issued by a regulatory agency.

Although the same disclosure is not required for an ALF, the Agency may deny an ALF license if the applicant has had a 25 percent or greater financial or ownership interest in any other health or residential entity that:

- Has closed due to financial instability;
- Had a receiver appointed;
- Had a licensed denied, suspended or revoked;
- Was the subject of a moratorium; or
- Had an injunction placed against it.¹⁴

Nursing Home Guide

The Nursing Home Guide (Guide)¹⁵ is a statutorily mandated publication that provides information to assist consumers in choosing a nursing home. The Guide provides specific information on each nursing home licensed in Florida including:

- Demographic and ownership information;
- Watch List information, which indicates if the nursing home has had a conditional license for certain deficiencies in the past 30 months. A conditional license status indicates that a facility did not meet, or correct upon follow-up, minimum standards at the time of an inspection. If a facility is challenging the conditional license, it is noted as “under appeal”;
- Ranking of the nursing home’s regulatory deficiencies for certain groupings of regulatory requirements in comparison with other nursing homes in the state, as designated by “stars.” Five stars indicates the nursing home is in the top 20 percent of nursing homes for compliance with that group of regulatory requirements;
- Whether the nursing home is operating under bankruptcy protection; and
- A link to inspection details for the facility.

The Guide is published annually, with quarterly updates on the Agency’s Internet site. The Agency indicates that demand for the printed book has diminished as the Internet version is updated more frequently and provides more detailed information. The annual cost to publish the hard copy guide is between \$15,000 and \$25,000. A computer application and manual

¹⁴ Agency Staff Analysis for SB 1668.

¹⁵ The Nursing Home Guide is available at: <<http://ahcaxnet.fdhc.state.fl.us/nhguide/>> (Last visited on March 29, 2008).

calculations combine and analyze state and federal inspection information to produce the data report. The Guide and its methodology have not been significantly revised since it was originally implemented in 2000.

Current Events

Nationally, concerns surfaced in the fall of 2007, regarding the purchase of Manor Care nursing homes by The Carlyle Group, a private equity firm. Manor Care is affiliated with 29 nursing homes in Florida. The Agency received several requests pursuant to ch. 120, F.S., to conduct public hearings related to the change of ownership applications for the Manor Care nursing homes. In this instance, as well as in similar instances in the past, the Agency did not believe that there is an opportunity under ch. 120, F.S., or within the Agency's licensure laws for the public or any external party to intervene in this type of licensure matter.¹⁶

III. Effect of Proposed Changes:

Section 1. Creates the "Long-Term Care Transparency Act."

Section 2. Amends s. 400.021, F.S., to define additional terms for use in regulating nursing homes as follows:

- "Affiliate" means an entity having the same or similar owners, officers, board members, directors, limited liability corporation members, operating company, management company, or address as a facility;
- "Controlling entity" means an entity that has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, control, or cause the direction of the operation, management, expenditure of money, or policies of a facility. A controlling entity does not include a lender, financial institution, or secured creditor who does not exercise any influence or control, whether formal or actual, over the operation or management of a facility;
- "Controlling financial interest" means having more than a 5 percent financial ownership interest in the facility, an affiliate, or controlling entity;
- "Entity" means an individual, partnership, association, joint venture, company, sole proprietorship, corporation, limited liability corporation, professional limited liability corporation, or any other form of doing business; and
- "Governing body" means the individuals who have responsibility for hiring the administrator and for approving a facility's policies and procedures and ensuring their proper implementation.

Section 3. Amends s. 400.0239, F.S., to authorize the Quality of Long-Term Care Facility Improvement Trust Fund to be used to fund the development and expansion of the electronic Nursing Home Guide to assist prospective residents in selecting a nursing facility.

Section 4. Amends s. 400.071, F.S., to require additional information in an application for a nursing home license, to be submitted in a format prescribed by the Agency, including:

¹⁶ *Supra* 4.

- A signed affidavit disclosing any entities that provide(d) health or residential care in which the applicant, an affiliate, a controlling entity, or an entity having a controlling financial interest in the applicant had any financial or ownership interest, and which, within the previous 5 years:
 - Closed (with an explanation whether the closure was voluntary or involuntary);
 - Filed for bankruptcy;
 - Had a license denied, suspended, or revoked; or
 - Had an injunction issued against it which was initiated by a regulatory agency.
- A signed affidavit disclosing affiliates, controlling entities, or entities having a controlling financial interest in the applicant;
- Proof of financial ability to operate, including the ability to provide staff at required levels and maintain solvency, the balance sheet and profit and loss statement of the nursing home's 2 previous fiscal years of operation, a statement of projected revenue and expenses for the first 12 months of operation, a detailed explanation of assumptions, the basis for financing anticipated cash-flow requirements, and the applicant's access to contingency financing;
- Copies of civil verdicts or judgments involving affiliates or controlling entities rendered within the preceding 10 years that relate to medical negligence, violation of resident's rights, or wrongful death.
- Copies of contracts with affiliates or controlling entities, including details of goods or services provided and the intended payment for those services;
- Copies of audits, investigation, or fines related to the receipt of federal or state funds by affiliates, controlling entities, and entities having a controlling financial interest in the applicant; and
- The names and dates of service of the members of the applicant's governing body;

Section 5. Amends s. 400.102, F.S., to authorize the Agency to take action against a nursing home license for the applicant's failure to disclose all affiliates, controlling entities, entities having a controlling financial interest, or members of the governing body.

Section 6. Amends s. 400.111, F.S., to require a licensure applicant to submit a signed affidavit disclosing any financial or ownership interest that an affiliate, controlling entity, or entity having a controlling financial interest has held within the previous 5 years in any entity licensed in any state to provide health or residential care which: has closed voluntarily or involuntarily; has filed for bankruptcy; has had a receiver appointed; has had a license denied, suspended, or revoked; or has had an injunction issued against it which was initiated by a regulatory agency. The bill also provides that as a condition of licensure, the licensee must agree to provide to the Agency a signed affidavit disclosing any financial or ownership interest that an affiliate, a controlling entity, or an entity having a controlling financial interest acquires within 30 days after the acquisition.

Section 7. Amends s. 400.121, F.S., to authorize the Agency to take regulatory action against a nursing home applicant or licensee if a regulatory agency takes action against another licensed facility that has a common controlling entity or an entity having a controlling financial interest in the licensee or application.

The Agency is required to revoke or deny a nursing home license if a controlling entity or an entity having a controlling financial interest in the licensee operates a facility in this state that:

- Has had two moratoria issued for substandard quality of care within a 30-month period;
- Is conditionally licensed for 180 or more continuous days;
- Is cited for two class I deficiencies arising from unrelated circumstances during the same survey or investigation; or
- Is cited for two class I deficiencies arising from separate surveys or investigations within a 30-month period.

Currently this requirement is limited to conditions related to the licensee only.

Section 8. Amends s. 400.141, F.S., to prohibit a nursing home from using its liability insurance for litigation costs or attorney's fees for the defense of a claim against the nursing home. A licensee must notify the Agency immediately if the policy limits or annual aggregate liability coverage has been exhausted.

Section 9. Amends s. 400.191, F.S., to become effective on December 1, 2008, to require disclosure of additional information in the electronic Nursing Home Guide, which must be updated weekly. The additional information that is to be disclosed online includes:

- A list of all affiliates, controlling entities, and entities having a controlling financial interest in the facility;
- Documents related to audits, investigations, or fines related to: the receipt or use of federal or state funds by the facility, any affiliate, controlling entity, or entity having a controlling financial interest; and results of any ongoing investigations into Medicaid or Medicare fraud or overpayment; standing corporate integrity agreements; or other remedial action by a public entity;
- The name of the administrator and all members of the facility's governing body, including their dates of service;
- A list by name and address, of all nursing home facilities that have submitted an application for a change of ownership, the date of submission, and the current status of each application; and
- Known Internet links to controlling entities and entities having a controlling financial interest.

A licensed nursing home must post in prominent locations, a copy of any conditional license in effect, regardless of any administrative or judicial challenge, and provide upon request to a person who has completed a written application for admission, a printed copy of the Nursing Home Guide. The nursing home is authorized to charge a reasonable fee to cover copying costs.

Section 10. Creates s. 400.197, F.S., related to changes in ownership of nursing homes. This section requires:

- A licensed nursing home to notify all residents and prominently post a copy of the request for a change of ownership in locations at the nursing home and on the primary Internet site of the facility within 5 days after submitting the request to the Agency;
- Authorizes a resident; resident's family member, legal representative, and guardian; facility staff; and other affected parties to submit information to the Agency to consider in the application review for the change of ownership licensure application;
- Authorizes the Agency to investigate as necessary to ascertain the proposed owner's character, experience, background, qualifications, and fitness for the nursing home license; and
- Provides that the new licensee assumes all liabilities of the prior licensee, affiliates, and controlling entities relating to or arising out of the operation of the facility and services provided at the facility under the prior licensee.

Section 11. Amends s. 429.02, F.S., to define additional terms for use in regulating ALFs as follows:

- "Affiliate" means an entity having the same or similar owners, officers, board members, directors, limited liability corporation members, operating company, management company, or address as an assisted living facility;
- "Controlling entity" means an entity that has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, control, or cause the direction of the operation, management, expenditure of money, or policies of a facility. A controlling entity does not include a lender, financial institution, or secured creditor who does not exercise any influence or control, whether formal or actual, over the operation or management of a facility;
- "Controlling financial interest" means having more than a 5 percent financial ownership interest in the facility, an affiliate, or controlling entity; and
- "Entity" means an individual, partnership, association, joint venture, company, sole proprietorship, corporation, limited liability corporation, professional limited liability corporation, or any other form of doing business.

Section 12. Amends s. 429.11, F.S., to require additional information from applicants for ALF licensure in a format prescribed by the Agency, including:

- A signed affidavit disclosing any affiliates, controlling entities, and entities having a controlling financial interest;
- Copies of contracts with affiliates of controlling entities, including details of services provided and the intended payment for those services; and
- Copies of audits, investigations, or fines related to the receipt of federal or state funds by affiliates, controlling entities, and entities having a controlling financial interest in the applicant.

As a condition of licensure, the licensee must agree to provide to the Agency a signed affidavit disclosing any financial or ownership interest that an affiliate, controlling entity, or an entity having a controlling financial interest acquires within 30 days after the acquisition.

Section 13. Amends s. 429.12, F.S., to require a licensed ALF to notify all residents and prominently post a copy of the request for a change of ownership in locations at the ALF and on the primary Internet site of the facility within 5 days after submitting the request to the Agency.

A resident; resident's family member, legal representative, and guardian; facility staff; and other affected parties may submit information to the Agency to consider in the application review for the change of ownership licensure application.

The Agency is authorized to investigate as necessary to ascertain the proposed owner's character, experience, background, qualifications, and fitness for the ALF license.

The new licensee assumes all liabilities of the prior licensee, its affiliates, and controlling entities relating to or arising out of the operation of the facility and services provided at the facility under the prior licensee.

Within 7 days after receipt of the new license, the new owner must notify the residents in writing of the change of ownership.

Section 14. Amends s. 429.14, F.S., to authorize the Agency to take regulatory action against an ALF applicant that fails to disclose all affiliates, controlling entities, and entities having a controlling financial interest. An ALF must post in the ALF, in a place that is visible to the public, a conditional license, regardless of whether it is being challenged.

Section 15. Amends s. 429.174, F.S., to eliminate an unnecessary reference to the definition of personal service.

Section 16. Amends s. 429.275, F.S., to prohibit use of an ALF's liability insurance for litigation costs or attorney's fees for the defense of a claim against the facility. The administrator or owner of an ALF must notify the Agency immediately if the policy limits or annual aggregate liability coverage has been exhausted.

Section 15. Provides an effective date of July 1, 2008, except for the provisions in Section 9 of the committee substitute.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. **Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. **Fiscal Impact Statement:**

A. **Tax/Fee Issues:**

None.

B. **Private Sector Impact:**

An applicant for an initial, renewal, or change of ownership license will be required to submit additional information to the Agency related to extended ownership and financial status. The public will be able to submit information for the Agency to consider in application reviews associated with a change of ownership of a nursing home or ALF. The full liability insurance policy amount will be available to a successful plaintiff since the policy will not be available to cover litigation costs or attorneys fees. Additional information will be made more easily accessible to the public.

C. **Government Sector Impact:**

The Agency's duties will be expanded due to additional data collection, analysis, and potential litigation for an estimated fiscal impact of \$760,113 in the first year and \$722,113 annually thereafter. In addition, the Agency indicates major programming changes will be required to the Nursing Home Guide at an estimated first year cost of \$576,000 for a total fiscal impact the first year of \$1,336,113. The Agency has strategies for reducing the fiscal impact of the bill.

VI. **Technical Deficiencies:**

The addition of special care units on line 398 appears redundant to existing language on line 400.

VII. **Related Issues:**

None.

VIII. **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 Regulation on April 15, 2008:

The committee substitute:

- Section 1. Names the act, the “Long-Term Care Transparency Act;”
- Section 2. Deletes from the definition of “controlling entity,” an entity that exhibits control over resident care for nursing homes, and specifies that a controlling entity does not include various types of lenders who do not exercise any influence or control

over the operation or management of the facility. The definition of “controlling financial interest” is modified to include entities having more than a 5 percent financial ownership interest;

- Section 3. Inserts a new section in the bill. Amends s. 400.0239, F.S., to authorize payment for the development and expansion of the electronic version of the Nursing Home Guide from the Quality of Long-Term Care Facility Improvement Trust Fund;
- Section 4. Revises the documentation required to substantiate the applicant’s financial ability to operate. This documentation includes, but is not limited to:
 - A demonstration of the applicant’s ability to provide staff at required levels and maintain solvency,
 - The balance sheet and profit and loss statement of the nursing home’s 2 previous fiscal years of operation,
 - A statement of projected revenues and expenses for the first 12 months of operation following licensure,
 - A detailed explanation of the assumptions implicit in these projections,
 - The basis for financing the applicant’s anticipated cash-flow requirements, and
 - The applicant’s access to contingency financing;
- Provides that this information is not required for a routine license renewal;
- Authorizes the Agency to prescribe the format for submission of financial and ownership information;
- Section 8. Clarifies that the nursing home must notify the Agency if the policy limits or annual aggregate liability coverage has been exhausted;
- Section 9. This section has an effective date of December 1, 2008. Repeals the printed form of the Nursing Home Guide. The Agency is required to update the electronic Nursing Home Guide weekly as opposed to quarterly. The amendment requires, rather than authorizes, the Agency to provide on its website information related to the licensure status, rating, and regulatory history of a facility as well as the Gold Seal status and internet links to affiliates, controlling, and entities having a controlling financial interest;
- Requires nursing homes to provide a printed copy of the Nursing Home Guide, for a reasonable charge, to persons who request one;
- Section 10. Limits the extent that a new nursing home owner assumes the liabilities of a prior licensee to those arising out of the operation of the facility and services provided at the facility under the prior license;
- Section 11. Deletes from the definition of “controlling entity,” an entity that exhibits control over resident care for ALFs, and specifies that a controlling entity does not include various types of lenders who do not exercise any influence or control over the operation or management of the facility. The definition of “controlling financial interest” is modified to include entities having more than a 5 percent financial ownership interest;
- Section 12. Authorizes the Agency to prescribe the format for submission of financial and ownership information;
- Section 13. Requires an ALF to notify residents in writing when a request for a change in ownership has been submitted to the Agency. Limits the extent a new ALF owner assumes the liabilities of a prior licensee to those arising out of the operation of the facility and services provided at the facility under the prior license; and.

- Section 17. Except for Section 9, which takes effect on December 1, 2008, the act takes effect on July 1, 2008.

B. Amendments:

None.

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