

Bill No. CS for CS for CS for SB 1202

Amendment No. Barcode 420982

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| <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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Senator Burt moved the following amendment:

Senate Amendment (with title amendment)

On page 43, line 10, through
page 46, line 2, delete those lines

and insert:

Section 20. Section 400.121, Florida Statutes, is amended to read:

400.121 Denial, suspension, revocation of license; moratorium on admissions; administrative fines; procedure; order to increase staffing.--

(1) The agency may deny an application, revoke, or suspend a license, or impose an administrative fine, not to exceed \$500 per violation per day, against any applicant or licensee for the following violations by the applicant, licensee, or other controlling interest:for

- (a) A violation of any provision of s. 400.102(1);
- (b) A demonstrated pattern of deficient practice;
- (c) Failure to pay any outstanding fines assessed by final order of the agency or final order of the Health Care

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1 Financing Administration pursuant to requirements for federal
2 certification. The agency may renew or approve the license of
3 an applicant following the assessment of a fine by final order
4 if such fine has been paid into an escrow account pending an
5 appeal of a final order;

6 (d) Exclusion from the Medicare or Medicaid program;
7 or

8 (e) An adverse action by a regulatory agency against
9 any other licensed facility that has a common controlling
10 interest with the licensee or applicant against whom the
11 action under this section is being brought. If the adverse
12 action involves solely the management company, the applicant
13 or licensee shall be given 30 days to remedy before final
14 action is taken. If the adverse action is based solely upon
15 actions by a controlling interest, the applicant or licensee
16 may present factors in mitigation of any proposed penalty
17 based upon a showing that such penalty is inappropriate under
18 the circumstances.

19
20 All hearings shall be held within the county in which the
21 licensee or applicant operates or applies for a license to
22 operate a facility as defined herein.

23 (2) Except as provided in s. 400.23(8), a \$500 fine
24 shall be imposed ~~The agency, as a part of any final order~~
25 ~~issued by it under this part, may impose such fine as it deems~~
26 ~~proper, except that such fine may not exceed \$500 for each~~
27 violation. Each day a violation of this part occurs
28 constitutes a separate violation and is subject to a separate
29 fine, but in no event may any fine aggregate more than \$5,000.
30 A fine may be levied pursuant to this section in lieu of and
31 notwithstanding the provisions of s. 400.23. Fines paid ~~by any~~

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1 ~~nursing home facility licensee under this subsection shall be~~
2 deposited in the Resident Protection Trust Fund and expended
3 as provided in s. 400.063.

4 (3) The agency shall revoke or deny a nursing home
5 license if the licensee or controlling interest operates a
6 facility in this state that:

7 (a) Has had two moratoria imposed by final order for
8 substandard quality of care, as defined by Title 42, C.F.R.
9 part 483, within any 30-month period;

10 (b) Is conditionally licensed for 180 or more
11 continuous days;

12 (c) Is cited for two class I deficiencies arising from
13 unrelated circumstances during the same survey or
14 investigation; or

15 (d) Is cited for two class I deficiencies arising from
16 separate surveys or investigations within a 30-month period.

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18 The licensee may present factors in mitigation of revocation,
19 and the agency may make a determination not to revoke a
20 license based upon a showing that revocation is inappropriate
21 under the circumstances.

22 ~~(4)~~(3) The agency may issue an order immediately
23 suspending or revoking a license when it determines that any
24 condition in the facility presents a danger to the health,
25 safety, or welfare of the residents in the facility.

26 ~~(5)~~(4)(a) The agency may impose an immediate
27 moratorium on admissions to any facility when the agency
28 determines that any condition in the facility presents a
29 threat to the health, safety, or welfare of the residents in
30 the facility.

31 (b) Where the agency has placed a moratorium on

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1 admissions on any facility two times within a 7-year period,
2 the agency may suspend the license of the nursing home and the
3 facility's management company, if any. ~~The licensee shall be~~
4 ~~afforded an administrative hearing within 90 days after the~~
5 ~~suspension to determine whether the license should be revoked.~~
6 During the suspension, the agency shall take the facility into
7 receivership and shall operate the facility.

8 ~~(6)(5)~~ An action taken by the agency to deny, suspend,
9 or revoke a facility's license under this part, ~~in which the~~
10 ~~agency claims that the facility owner or an employee of the~~
11 ~~facility has threatened the health, safety, or welfare of a~~
12 ~~resident of the facility,~~ shall be heard by the Division of
13 Administrative Hearings of the Department of Management
14 Services within 60 ~~120~~ days after the assignment of an
15 administrative law judge ~~receipt of the facility's request for~~
16 ~~a hearing~~, unless the time limitation is waived by both
17 parties. The administrative law judge must render a decision
18 within 30 days after receipt of a proposed recommended order.
19 ~~This subsection does not modify the requirement that an~~
20 ~~administrative hearing be held within 90 days after a license~~
21 ~~is suspended under paragraph (4)(b).~~

22 ~~(7)(6)~~ The agency is authorized to require a facility
23 to increase staffing beyond the minimum required by law, if
24 the agency has taken administrative action against the
25 facility for care-related deficiencies directly attributable
26 to insufficient staff. Under such circumstances, the facility
27 may request an expedited interim rate increase. The agency
28 shall process the request within 10 days after receipt of all
29 required documentation from the facility. A facility that
30 fails to maintain the required increased staffing is subject
31 to a fine of \$500 per day for each day the staffing is below

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1 the level required by the agency.

2 (8) An administrative proceeding challenging an action
3 taken by the agency pursuant to this section shall be reviewed
4 on the basis of the facts and conditions that resulted in such
5 agency action.

6 (9) Notwithstanding any other provision of law to the
7 contrary, agency action in an administrative proceeding under
8 this section may be overcome by the licensee upon a showing by
9 a preponderance of the evidence to the contrary.

10 (10) In addition to any other sanction imposed under
11 this part, in any final order that imposes sanctions, the
12 agency may assess costs related to the investigation and
13 prosecution of the case. Payment of agency costs shall be
14 deposited into the Health Care Trust Fund.

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17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 On page 4, line 8, after the semicolon,

20

21 insert:

22 requiring that the agency revoke or deny a
23 nursing home license under specified
24 circumstances; providing standards for
25 administrative proceedings; providing for the
26 agency to assess the costs of an investigation
27 and prosecution;

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