

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

The Council for Healthy Communities offered the following:

Amendment

On page 48, line 18 through page 50, line 13
remove from the bill: all said lines

and insert in lieu thereof:

Section 19. 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:

(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 to 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 which has a common controlling
10 interest with the licensee or applicant against whom the
11 action hereunder is being brought. If the adverse action
12 involves solely the management company, the applicant or
13 licensee shall be given 30 days to remedy before agency action
14 is taken. If such adverse action is solely based upon actions
15 by a controlling interest, the applicant or licensee may
16 present factors in mitigation of any proposed penalty based
17 upon a showing that such penalty is inappropriate under the
18 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 finally imposed for
8 substandard quality of care as defined by Title 42, Code of
9 Federal Regulations 483, within any 30 month period; or

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

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.

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

21 ~~(4)(3)~~ The agency may issue an order immediately
22 suspending or revoking a license when it determines that any
23 condition in the facility presents a danger to the health,
24 safety, or welfare of the residents in the facility.

25 ~~(5)(4)~~(a) The agency may impose an immediate
26 moratorium on admissions to any facility when the agency
27 determines that any condition in the facility presents a
28 threat to the health, safety, or welfare of the residents in
29 the facility.

30 (b) Where the agency has placed a moratorium on
31 admissions on any facility two times within a 7-year period,

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

7 (6)~~(5)~~ An action taken by the agency to deny,
8 suspend, or revoke a facility's license under this part, ~~in~~
9 ~~which the agency claims that the facility owner or an employee~~
10 ~~of the facility has threatened the health, safety, or welfare~~
11 ~~of a resident of the facility,~~ shall be heard by the Division
12 of Administrative Hearings of the Department of Management
13 Services within 60 ~~120~~ days after the assignment of an
14 administrative law judge receipt of the facility's request for
15 ~~a hearing,~~ unless the time limitation is waived by both
16 parties. The administrative law judge must render a decision
17 within 30 days after receipt of a proposed recommended order.
18 ~~This subsection does not modify the requirement that an~~
19 ~~administrative hearing be held within 90 days after a license~~
20 ~~is suspended under paragraph (4)(b).~~

21 (7)~~(6)~~ The agency is authorized to require a facility
22 to increase staffing beyond the minimum required by law, if
23 the agency has taken administrative action against the
24 facility for care-related deficiencies directly attributable
25 to insufficient staff. Under such circumstances, the facility
26 may request an expedited interim rate increase. The agency
27 shall process the request within 10 days after receipt of all
28 required documentation from the facility. A facility that
29 fails to maintain the required increased staffing is subject
30 to a fine of \$500 per day for each day the staffing is below
31 the level required by the agency.

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

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

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

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