

By Senator Holzendorf

2-762A-01

1 A bill to be entitled
2 An act relating to insurance coverage for
3 nursing homes and assisted living facilities;
4 amending s. 627.351, F.S.; providing that
5 nursing homes and assisted living facilities
6 are immediately eligible for coverage in the
7 Florida Property and Casualty Joint
8 Underwriting Association; providing that rates
9 used by the association are subject to s.
10 27.062, F.S.; eliminating provisions tying the
11 initial rates of the association to rates
12 contained in the Insurance Services Office
13 filing with the Department of Insurance;
14 creating the Long-Term-Care-Facility Casualty
15 Joint Underwriting Plan; providing for
16 participation in the plan by casualty insurers;
17 creating and providing for operation of the
18 plan by the Long-Term-Care-Facility Casualty
19 Joint Underwriting Association; providing for
20 membership of the association; providing for
21 coverage of certain long-term-care facilities
22 for death and personal injury claims of
23 residents arising out of activities of nursing
24 homes and assisted living facilities; providing
25 for classification of risks and rates;
26 providing coverage limits and a deductible;
27 providing for a risk-management program;
28 providing for assessments of insureds and
29 participating insurers for deficits under
30 certain circumstances; providing for service of
31 policies; providing for public access to

1 records; providing eligibility criteria for
2 coverage; requiring insureds to provide
3 evidence of financial responsibility; providing
4 for service of process; providing
5 appropriations; providing an effective date.
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7 Be It Enacted by the Legislature of the State of Florida:
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9 Section 1. Paragraphs (a) and (b) of subsection (5) of
10 section 627.351, Florida Statutes, are amended, present
11 subsection (7) of that section is redesignated as subsection
12 (8), and a new subsection (7) is added to that section, to
13 read:

14 627.351 Insurance risk apportionment plans.--

15 (5) PROPERTY AND CASUALTY INSURANCE RISK
16 APPORTIONMENT.--The department shall adopt by rule a joint
17 underwriting plan to equitably apportion among insurers
18 authorized in this state to write property insurance as
19 defined in s. 624.604 or casualty insurance as defined in s.
20 624.605, the underwriting of one or more classes of property
21 insurance or casualty insurance, except for the types of
22 insurance that are included within property insurance or
23 casualty insurance for which an equitable apportionment plan,
24 assigned risk plan, or joint underwriting plan is authorized
25 under s. 627.311 or subsection (1), subsection (2), subsection
26 (3), subsection (4), or subsection (6) and except for risks
27 eligible for flood insurance written through the federal flood
28 insurance program to persons with risks eligible under
29 subparagraph (a)1. and who are in good faith entitled to, but
30 are unable to, obtain such property or casualty insurance
31 coverage, including excess coverage, through the voluntary

1 market. For purposes of this subsection, an adequate level of
2 coverage means that coverage which is required by state law or
3 by responsible or prudent business practices. The Joint
4 Underwriting Association shall not be required to provide
5 coverage for any type of risk for which there are no insurers
6 providing similar coverage in this state. The department may
7 designate one or more participating insurers who agree to
8 provide policyholder and claims service, including the
9 issuance of policies, on behalf of the participating insurers.

10 (a) The plan shall provide:

11 1. A means of establishing eligibility of a risk for
12 obtaining insurance through the plan, which provides that:

13 a. A risk shall be eligible for such property
14 insurance or casualty insurance as is required by Florida law
15 if the insurance is unavailable in the voluntary market,
16 including the market assistance program and the surplus lines
17 market.

18 b. A commercial risk not eligible under
19 sub-subparagraph a. shall be eligible for property or casualty
20 insurance if:

21 (I) The insurance is unavailable in the voluntary
22 market, including the market assistance plan and the surplus
23 lines market;

24 (II) Failure to secure the insurance would
25 substantially impair the ability of the entity to conduct its
26 affairs; and

27 (III) The risk is not determined by the Risk
28 Underwriting Committee to be uninsurable.

29 c. In the event the Federal Government terminates the
30 Federal Crime Insurance Program established under 44 C.F.R.
31 ss. 80-83, Florida commercial and residential risks previously

1 insured under the federal program shall be eligible under the
2 plan.

3 d.(I) In the event a risk is eligible under this
4 paragraph and in the event the market assistance plan receives
5 a minimum of 100 applications for coverage within a 3-month
6 period, or 200 applications for coverage within a 1-year
7 period or less, for a given class of risk contained in the
8 classification system defined in the plan of operation of the
9 Joint Underwriting Association, and unless the market
10 assistance plan provides a quotation for at least 80 percent
11 of such applicants, such classification shall immediately be
12 eligible for coverage in the Joint Underwriting Association.

13 (II) Any market assistance plan application which is
14 rejected because an individual risk is so hazardous as to be
15 practically uninsurable, considering whether the likelihood of
16 a loss for such a risk is substantially higher than for other
17 risks of the same class due to individual risk
18 characteristics, prior loss experience, unwillingness to
19 cooperate with a prior insurer, physical characteristics and
20 physical location shall not be included in the minimum
21 percentage calculation provided above. In the event that there
22 is any legal or administrative challenge to a determination by
23 the department that the conditions of this subparagraph have
24 been met for eligibility for coverage in the Joint
25 Underwriting Association for a given classification, any
26 eligible risk may obtain coverage during the pendency of any
27 such challenge.

28 e. In order to qualify as a quotation for the purpose
29 of meeting the minimum percentage calculation in this
30 subparagraph, the quoted premium must meet the following
31 criteria:

1 (I) In the case of an admitted carrier, the quoted
2 premium must not exceed the premium available for a given
3 classification currently in use by the Joint Underwriting
4 Association or the premium developed by using the rates and
5 rating plans on file with the department by the quoting
6 insurer, whichever is greater.

7 (II) In the case of an authorized surplus lines
8 insurer, the quoted premium must not exceed the premium
9 available for a given classification currently in use by the
10 Joint Underwriting Association by more than 25 percent, after
11 consideration of any individual risk surcharge or credit.

12 f. Any agent who falsely certifies the unavailability
13 of coverage as provided by sub-subparagraphs a. and b., is
14 subject to the penalties provided in s. 626.611.

15 g. Notwithstanding subparagraph d., nursing homes
16 licensed under part II of chapter 400 and assisted living
17 facilities licensed under part III of chapter 400 are
18 immediately eligible for coverage in the Joint Underwriting
19 Association.

20 2. A means for the equitable apportionment of profits
21 or losses and expenses among participating insurers.

22 3. Rules for the classification of risks and rates
23 which reflect the past and prospective loss experience.

24 4. A rating plan which reasonably reflects the prior
25 claims experience of the insureds. Such rating plan shall
26 include at least two levels of rates for risks that have
27 favorable loss experience and risks that have unfavorable loss
28 experience, as established by the plan.

29 5. Reasonable limits to available amounts of
30 insurance. Such limits may not be less than the amounts of
31 insurance required of eligible risks by Florida law.

1 6. Risk management requirements for insurance where
2 such requirements are reasonable and are expected to reduce
3 losses.

4 7. Deductibles as may be necessary to meet the needs
5 of insureds.

6 8. Policy forms which are consistent with the forms in
7 use by the majority of the insurers providing coverage in the
8 voluntary market for the coverage requested by the applicant.

9 9. A means to remove risks from the plan once such
10 risks no longer meet the eligibility requirements of this
11 paragraph. For this purpose, the plan shall include the
12 following requirements: At each 6-month interval after the
13 activation of any class of insureds, the board of governors or
14 its designated committee shall review the number of
15 applications to the market assistance plan for that class. If,
16 based on these latest numbers, at least 90 percent of such
17 applications have been provided a quotation, the Joint
18 Underwriting Association shall cease underwriting new
19 applications for such class within 30 days, and notification
20 of this decision shall be sent to the Insurance Commissioner,
21 the major agents' associations, and the board of directors of
22 the market assistance plan. A quotation for the purpose of
23 this subparagraph shall meet the same criteria for a quotation
24 as provided in sub-subparagraph d. All policies which were
25 previously written for that class shall continue in force
26 until their normal expiration date, at which time, subject to
27 the required timely notification of nonrenewal by the Joint
28 Underwriting Association, the insured may then elect to
29 reapply to the Joint Underwriting Association according to the
30 requirements of eligibility. If, upon reapplication, those
31 previously insured Joint Underwriting Association risks meet

1 the eligibility requirements, the Joint Underwriting
2 Association shall provide the coverage requested.

3 10. A means for providing credits to insurers against
4 any deficit assessment levied pursuant to paragraph (c), for
5 risks voluntarily written through the market assistance plan
6 by such insurers.

7 11. That the Joint Underwriting Association shall
8 operate subject to the supervision and approval of a board of
9 governors consisting of 13 individuals appointed by the
10 Insurance Commissioner, and shall have an executive or
11 underwriting committee. At least four of the members shall be
12 representatives of insurance trade associations as follows:
13 one member from the American Insurance Association, one member
14 from the Alliance of American Insurers, one member from the
15 National Association of Independent Insurers, and one member
16 from an unaffiliated insurer writing coverage on a national
17 basis. Two representatives shall be from two of the statewide
18 agents' associations. Each board member shall be appointed to
19 serve for 2-year terms beginning on a date designated by the
20 plan and shall serve at the pleasure of the commissioner.
21 Members may be reappointed for subsequent terms.

22 (b) Rates used by the Joint Underwriting Association
23 must shall be actuarially sound and are subject to s. 627.062.
24 ~~To the extent applicable, the rate standards set forth in s.~~
25 ~~627.062 shall be considered by the department in establishing~~
26 ~~rates to be used by the joint underwriting plan. The initial~~
27 ~~rate level shall be determined using the rates, rules, rating~~
28 ~~plans, and classifications contained in the most current~~
29 ~~Insurance Services Office (ISO) filing with the department or~~
30 ~~the filing of other licensed rating organizations with an~~
31 ~~additional increment of 25 percent of premium. For any type of~~

1 ~~coverage or classification which lends itself to manual rating~~
2 ~~for which the Insurance Services Office or another licensed~~
3 ~~rating organization does not file or publish a rate, the Joint~~
4 ~~Underwriting Association shall file and use an initial rate~~
5 ~~based on the average current market rate. The initial rate~~
6 ~~level for the rate plan shall also be subject to an experience~~
7 ~~and schedule rating plan which may produce a maximum of 25~~
8 ~~percent debits or credits. For any risk which does not lend~~
9 ~~itself to manual rating and for which no rate has been~~
10 ~~promulgated under the rate plan, the board shall develop and~~
11 ~~file with the commissioner, subject to his or her approval,~~
12 ~~appropriate criteria and factors for rating the individual~~
13 ~~risk. Such criteria and factors shall include, but not be~~
14 ~~limited to, loss rating plans, composite rating plans, and~~
15 ~~unique and unusual risk rating plans. The initial rates~~
16 ~~required under this paragraph shall be adjusted in conformity~~
17 ~~with future filings by the Insurance Services Office with the~~
18 ~~department and shall remain in effect until such time as the~~
19 ~~Joint Underwriting Association has sufficient data as to~~
20 ~~independently justify an actuarially sound change in such~~
21 ~~rates.~~

22 (7) LONG-TERM-CARE-FACILITY JOINT UNDERWRITING PLAN.--

23 (a) The department shall, after consultation with
24 insurers as set forth in paragraph (b), adopt a joint
25 underwriting plan as set forth in paragraph (d).

26 (b) Entities authorized to write life insurance, as
27 defined in s. 624.602 and entities authorized to write health
28 insurance as defined in s. 624.603 shall participate in the
29 plan and shall be members of the Long-Term-Care-Facility
30 Casualty Joint Underwriting Association.

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1 (c) The Long-Term-Care-Facility Casualty Joint
2 Underwriting Association shall operate subject to the
3 supervision and approval of a board of governors consisting of
4 representatives of five of the insurers participating in the
5 association, an attorney named by The Florida Bar, a
6 representative of a not-for-profit nursing home licensed under
7 part I of chapter 400 named by the Florida Healthcare
8 Association, and a representative of a not-for-profit assisted
9 living facility licensed under part II of chapter 400 named by
10 the Florida Association of Homes for the Aging. The board of
11 governors shall choose, during its first meeting held after
12 June 30 of each year, one of its members to serve as chair and
13 another member to serve as vice chair. There shall be no
14 liability on the part of, and no cause of action shall arise
15 against, any member insurer or self-insurer or its agents or
16 employees, the association or its agents or employees, members
17 of the the board of governors, or the department or its
18 representatives for any action taken by them in the
19 performance of their duties and the exercise of their powers
20 under this subsection.

21 (d) The plan shall provide coverage to long-term-care
22 facilities as defined in paragraph (h) which qualify under
23 paragraph (i) for liability for damages resulting from the
24 death or personal injuries suffered by any resident arising
25 out of the insured's activities. The plan shall provide
26 appropriate policy forms for long-term-care facilities as
27 defined in paragraph (h). The plan shall include, without
28 limitation:

29 1. Classifications of risks and rates which reflect
30 past and prospective loss and expense experience in different
31 geographical areas. To assure that plan rates are adequate to

1 pay claims and expenses, the association shall develop a means
2 of obtaining loss and expense experience, and the plan shall
3 file such experience, when available, with the department in
4 sufficient detail for it to make a determination of rate
5 adequacy. Within 60 days after a rate filing, the department
6 shall approve those rate revisions that are fully supported by
7 the filing. In addition to provisions for claims and expenses,
8 the ratemaking formula may include a factor for projected
9 claims trending and a margin for contingencies. The use of
10 trend factors may not be found to be inappropriate.

11 2. A rating plan that reasonably recognizes the prior
12 claims experience of insureds.

13 3. Protection in an amount not to exceed \$1 million
14 per claim, with a maximum annual aggregate of \$3 million. Such
15 coverage shall be available as primary coverage after the
16 insured satisfies a deductible of \$500,000 per claim. The plan
17 shall also provide tail coverage in these amounts to insureds
18 whose claims-made coverage with another insurer or trust has
19 or will be terminated. Such tail coverage must provide
20 coverage for incidents that occurred during the
21 claims-made-policy period for which a claim is made after the
22 policy period.

23 4. Auditing of association members to assure
24 implementation of the risk-management program required by s.
25 400.1413. The plan shall refuse to insure any insured who
26 refuses or fails to comply with the risk-management program
27 established in s. 400.1413. Prior to cancellation or refusal
28 to renew an insured, the association must give the insured 60
29 days' notice of intent to cancel or nonrenew and must notify
30 the insured of any action that must be taken to comply with
31 the risk-management program.

1 (e) If an underwriting deficit exists for any policy
2 year the plan is in effect, any surplus that has accrued from
3 previous years and that is not projected within reasonable
4 actuarial certainty to be needed for payment of claims in the
5 year the surplus arose shall be used to offset the deficit, to
6 the extent available.

7 1. As to the remaining deficit, except those relating
8 to deficit assessment coverage, each policyholder shall pay to
9 the association a premium contingency assessment not to exceed
10 one-third of the premium payment paid by such policyholder to
11 the association for that policy year. The association shall
12 pay no further claims on any policy for a policyholder who
13 fails to pay the premium contingency assessment.

14 2. If there is any remaining deficit under the plan
15 after maximum collection of the premium contingency
16 assessment, such deficit shall be recovered from the companies
17 participating in the plan in the proportion that the net
18 direct premiums of each member written during the calendar
19 year immediately preceding the end of the policy year for
20 which there is a deficit assessment bears to the aggregate net
21 direct premiums written in this state by all members of the
22 association. The term "premiums" as used in this subparagraph
23 means premiums for the lines of insurance defined in ss.
24 624.602 and 624.603, including premiums for such coverage
25 issued under package policies.

26 (f) The plan shall provide for one or more insurers
27 able and willing to provide policy service through licensed
28 resident agents and claims service on behalf of all other
29 insurers participating in the plan. If an insurer is not able
30 and willing to provide such services, the association may
31 perform such services.

1 (g) Except as otherwise provided by general law, all
2 books, records, documents, or audits relating to the Joint
3 Underwriting Association or its operation shall be open to
4 public inspection.

5 (h) As used in this subsection, the term
6 "long-term-care facility" means the licensee of a nursing home
7 licensed under part I of chapter 400 or the licensee of an
8 assisted living facility licensed under part II of chapter
9 400.

10 (i) To be eligible for coverage as an insured under
11 the plan, a long-term-care facility must meet all of the
12 following criteria at the time coverage is instituted and for
13 the duration of the coverage:

14 1. The insured must be in compliance with minimum
15 staffing guidelines and qualifications as provided by state
16 and federal law, whichever provides the higher staffing and
17 qualification levels.

18 2. The insured must maintain the facility records and
19 the medical records of the residents in accordance with state
20 and federal law.

21 3. The insured must have no class I or class II
22 deficiencies and have had no such deficiencies within the 12
23 months preceding the institution of coverage.

24 4. The insured must not be assigned conditional
25 licensure status and must not have been assigned conditional
26 licensure status at any time within the 12 months preceding
27 the institution of coverage.

28 5. The insured must maintain an internal
29 risk-management and quality-assurance program in accordance
30 with s. 400.1413.

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1 6. The insured must provide evidence of financial
2 responsibility, which coverage may be provided by:

3 a. Establishing and maintaining an escrow account
4 consisting of cash or assets eligible for deposit in
5 accordance with s. 625.52, in an amount not less than \$500,000
6 per claim, with a minimum annual aggregate of not less than
7 \$1.5 million;

8 b. Obtaining and maintaining casualty coverage in an
9 amount not less than \$500,000 per claim, with a minimum annual
10 aggregate of not less than \$1.5 million, from an authorized
11 insurer as defined under s. 624.09, from a surplus lines
12 insurer as defined under s. 626.914(2), from a risk retention
13 group as defined under s. 627.942, or through a plan of
14 self-insurance as provided in s. 627.357; or

15 c. Obtaining and maintaining an unexpired, irrevocable
16 letter of credit, established pursuant to chapter 675, in an
17 amount not less than \$500,000 per claim, with a minimum
18 aggregate availability of credit of not less than \$1.5
19 million. The letter of credit must be payable to the licensee
20 as beneficiary upon presentment of a final judgment indicating
21 liability and awarding damages to be paid by the licensee or
22 upon presentment of a settlement agreement signed by all
23 parties to such agreement when such final judgment or
24 settlement is a result of a covered claim by a resident
25 arising from the activities of the insured. Such letter of
26 credit must be nonassignable and nontransferable and must be
27 issued by a bank or savings association organized and existing
28 under the laws of this state or a bank or savings association
29 organized under the laws of the United State which has its
30 principal place of business in this state or has a branch

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1 office that is authorized under the laws of this state or of
2 the United States to receive deposits in this state.

3 (j) The manager of the plan or the manager's assistant
4 is the agent for service of process for the plan.

5 Section 2. (1) The sum of \$_____ is appropriated
6 from _____ to the Agency for Health Care Administration for
7 fiscal year 2001-2002 to implement the provisions of this act.

8 (2) The sum of \$_____ is appropriated from
9 _____ to the Department of Elderly Affairs for fiscal year
10 2001-2002 to fund the responsibilities of the Office of State
11 Long-Term-Care Ombudsman as created by this act.

12 Section 3. There is hereby appropriated for transfer
13 the sum of \$20 million from the Insurance Commissioner's
14 Regulatory Trust Fund to the Long-Term-Care-Facility Casualty
15 Joint Underwriting Association.

16 Section 4. This act shall take effect July 1, 2001.

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19 SENATE SUMMARY

20 Revises provisions relating to insurance coverage for
21 nursing homes and assisted living facilities. Provides
22 that such facilities are immediately eligible for
23 coverage in the Florida Property and Casualty Joint
24 Underwriting Association and that the rates used by the
25 association are subject to certain rate standards.
26 Eliminates requirements that the initial rates of the
27 association be tied to certain Insurance Services Office
28 filings. Creates the Long-Term-Care-Facility Casualty
29 Joint Underwriting Plan and Association and provides
30 participation requirements and procedures for casualty
31 insurers. Provides for coverage of certain facilities.
Provides for classification of risks. Provides coverage
limits and deductibles. Provides for assessments, for
service of policies, and for public access to records.
Provides for eligibility requirements. Provides
appropriations.