

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1267 CS

Nursing Homes

**SPONSOR(S):** Stargel

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2572

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Elder &amp; Long-Term Care Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Walsh</u>	<u>Liem</u>
2) <u>Judiciary Committee</u>	<u>11 Y, 0 N, w/CS</u>	<u>Hogge</u>	<u>Hogge</u>
3) <u>Health Care Appropriations Committee</u>	<u>W/D</u>	<u></u>	<u></u>
4) <u>Health &amp; Families Council</u>	<u>10 Y, 0 N</u>	<u>Walsh</u>	<u>Moore</u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

The bill authorizes residents of nursing homes to request a change in the placement of their bed in their room under certain conditions. The location of the bed may be changed only if it does not infringe on any roommate or interfere with care or safety of the resident as determined by the facility.

The bill requires all nursing homes to be protected by approved automatic sprinkler systems and specifies a time schedule for compliance. The bill establishes a loan guarantee program to help nursing homes defray the cost of installing sprinkler systems.

AHCA estimates that there are 35 nursing homes in the state that will be required to install sprinkler systems at a total cost of \$4.41 million. AHCA estimates that Medicaid will pay an annual cost of \$669,419, or \$275,198 in General Revenue and \$394,221 from the Medical Care Trust Fund. The bill authorizes use of Medicaid funds for capital improvements to help pay for sprinkler system installation and authorizes a 5-year repayment period. Any Medicaid funds used for sprinkler system installation must come from existing Medicaid appropriations. The total estimated cost to Medicaid over the five-year period is \$3,347,097. (See "Fiscal Comments" for additional information.)

The bill takes effect July 1, 2005.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill requires all nursing homes to put in place an automatic sprinkler system by December 31, 2010. The bill also provides the Division of State Fire Marshal authority to implement the loan guarantee program.

**Safeguard Individual Liberty** – The bill allows residents of nursing homes to request a change in the placement of their beds in their rooms.

#### B. EFFECT OF PROPOSED CHANGES:

##### BACKGROUND

##### Firesafety Sprinkler Systems

Automatic fire sprinklers have been in use in the U.S. since 1874 according to information provided by fire suppression system contractors. The Division of State Fire Marshal (the Fire Marshal) within DFS is responsible for protecting Floridians from fire hazards under chapter 633, F.S.

Section 633.025, F.S., directs the State Fire Marshal, along with each municipality, county and special district with firesafety responsibilities, to adopt the most current edition of the National Fire Protection Association (NFPA) 101, Life Safety Code. That Code provides standards for fire alarms, fire suppression systems, and automatic sprinkler systems for various buildings, including buildings occupied as “health care occupancies” which include nursing homes. Under the Code, hazardous areas within nursing homes include boiler and fuel-fired heater rooms, laundries, paint shops, repair shops, soiled linen rooms, trash collection rooms, specified storage rooms, and laboratories employing flammable or combustible materials.

The Fire Marshal reports that installation of automatic sprinkler systems prevents fire and the toxic smoke and gases produced by fire. When sprinklers are present in a building, the chances of dying in a fire are cut by one-half to two-thirds, compared to building fires where sprinklers are not present. When measured by the average number of deaths per thousand fires in 1994-1998, the reduction associated with sprinklers is 82 percent for properties that care for the aged or sick. The costs associated to insure properties with sprinkler systems are also less, compared to the insurance costs for buildings with no sprinkler systems.

##### Nursing Homes

In 2003, fires in nursing homes occurred in two states. In Tennessee, a fire in a nursing home killed eight people, and in Connecticut, sixteen patients died in a nursing home fire. Officials in those two states reported that there were no sprinkler systems in the buildings.

The Insurance Regulatory Trust Fund is created by s. 624.523, F.S. It is funded by a variety of insurance-related fees, including fines, taxes, application fees and license fees required by the Insurance Code.

Pursuant to part II of chapter 400, F.S., nursing homes are licensed by AHCA. According to AHCA, nursing homes are required<sup>1</sup> to comply with the minimum standards of the National Fire Protection Association (NFPA) 101, Life Safety Code, as adopted by the Fire Marshal, and with the Florida

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<sup>1</sup> S. 400.232, F.S.

Building Code under s. 553.73, F.S. However, the firesafety and Building Code provisions do not require all existing nursing homes to be fully sprinklered because the automatic sprinkler system standards are dependent on the specific physical plant conditions of each nursing home, such as construction type, height in stories, size of facility, and other similar provisions.

AHCA reports there are currently 35 existing nursing home facilities in the state that are not “fully” sprinklered; however, these facilities are still in compliance with all the aforementioned standards and codes. According to AHCA, the 35 affected nursing homes have approximately 4,300 to 5,000 beds which are either partially sprinklered or completely without sprinklers. This represents about 5 percent of Florida’s total nursing home beds.

### **Proposed Changes**

The bill authorizes residents of nursing homes, or their representatives, to request a change in the placement of their bed in their room, provided at admission they are presented with a room that meets requirements of the Florida Building Code. The location of the bed may be changed only if it does not infringe on any roommate or interfere with care or safety of the resident as determined by the facility.

The bill requires all nursing homes to be protected by approved automatic sprinkler systems and specifies a time schedule for compliance:

- Each “hazardous area” of a nursing home, as defined by the National Fire Protection Association, must be protected by an approved sprinkler system by December 31, 2008; and
- The entire nursing home must be protected by an approved sprinkler system by December 31, 2010.

The bill authorizes the Fire Marshal to grant two 1-year extensions for installing sprinkler systems in nonhazardous areas of nursing homes, but prohibits extensions for installing systems in hazardous areas of such homes. The bill authorizes DFS to adopt rules, enforce the sprinkler system standards, and impose administrative sanctions for nursing homes that violate these provisions.

The bill permits the State Fire Marshal, with the assistance of the Division of Treasury, to establish a limited guarantee program to be known as the “State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program” to be funded with \$4 million from the Insurance Regulatory Trust Fund. The Fire Marshal will solicit proposals from and select private financial institutions approved as state depositories to provide loans to the affected nursing homes. The bill requires the Fire Marshal to approve loan applications for fire protection plans to ensure that the systems meet the Firesafety Code.

The loan guarantee program will accept applications until June 30, 2006. The program may not guarantee any limited loan guarantee agreement for a period longer than ten years. Each guarantee is limited to 50 percent of the principal. Both the state and approved lenders will hold a security interest in the property for the duration of the loan.

### **C. SECTION DIRECTORY:**

**Section 1:** Amends s. 400.23, F.S.; authorizes residents of nursing homes to request a change in the placement of their bed in their room under certain conditions; provides the location of the bed may be changed only if it does not infringe on any roommate or interfere with care or safety of the resident as determined by the facility.

**Section 2:** Amends s. 633.022, F.S.; adds subsection (4); requires each licensed nursing home to possess an approved, supervised automatic sprinkler system in accordance with national standards and fire codes; provides dates for compliance with the requirement to install sprinkler systems; provides rulemaking authority to implement and enforce the requirements of this section.

**Section 3:** Creates s. 633.024, F.S.; provides legislative intent relating to the creation and operation of a limited loan guarantee program to assist nursing homes in retrofitting for sprinkler systems.

**Section 4:** Creates s. 633.0245, F.S.; provides authority to establish the State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program to be funded from the existing Insurance Regulatory Trust Fund; provides rulemaking authority to prescribe application form.

**Section 5:** Provides an effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

See D. Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Nursing homes that are not already compliant will be required to install sprinkler systems. Some of those costs may be reimbursed by Medicaid funds available for capital improvements. The total estimate for compliance by the 35 affected nursing homes is approximately \$4.41 million.

### D. FISCAL COMMENTS:

The following information is based on a fiscal analysis from AHCA dated March 31, 2005.

If the costs associated with retrofitting currently exempted nursing homes are passed on in the Medicaid cost-report, the state share (from the General Revenue Fund) would be approximately \$162,531 per year over the 5 years authorized in the CS for implementation.

- The cost estimates are based on a cost of \$3 per square foot
- for 35 facilities at 42,000 square feet each
- average cost per facility \$126,000
- for a total of approximately 1.47 million square feet
- \$4,410,000 in total project costs

This analysis assumes:

- All 35 facilities install sprinklers in year 1
- Reimbursement is based on Fair Rental Value System (FRVS)
- No providers are limited to their per Bed Standard Limitation
- All providers are 73 percent on their FRVS Indexing Curve

- Allocating the costs over the 5 and one-half years allowing for implementation for a total cost per year

The bill authorizes use of Medicaid funds available for capital improvements to help pay for sprinkler system installation and authorizes a 5-year repayment period. Any Medicaid funds used for sprinkler system installation must come from existing Medicaid appropriations.

The Division of State Fire Marshal will administer the Nursing Home Fire Protection Loan Guarantee Program. The Division reports that it can operate the loan program within existing resources. The guarantee account will be funded from monies and interest earned from the existing Insurance Regulatory Trust Fund. The bill specifies that a maximum of \$4 million from the trust fund may be used for the loan guarantee program. State monies will be paid only for defaulted loans, at a rate of 50 percent of the total loan amount and only after the lending institution exhausts all normal remedies available for loan defaults.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The Division of State Fire Marshal is granted rulemaking authority to:

- Implement and enforce the requirement that nursing homes be protected by an automatic sprinkler system.
- Implement the loan guarantee program and associated provisions of the CS.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

This analysis is drafted to the Committee Substitute as it passed the Judiciary Committee.

On April 18, 2005, the Judiciary Committee adopted two amendments to this bill to change the bill as follows:

- Removes section 1 of the bill relating to nursing home liability; caps on noneconomic damages in a civil claim brought against a community-based nursing home alleging a violation of a resident's rights or negligence; and provisions authorizing a claims bill for any noneconomic damages awarded in excess of the cap.
- Inserts a new section of the bill to provide that residents of nursing homes may request a change in the placement of their bed in their room.

On April 6, 2005, the Committee on Elder & Long-Term Care adopted seven amendments to HB 1267 and favorably reported a Committee Substitute. The amendments change the bill as follows:

- Adds a finding that non-profit nursing facilities rank higher than for-profit facilities in quality of care standards.
- Applies the caps on noneconomic damages to all claimants on an incident.
- Provides that the limitation on liability is not applicable in the event of intentional misconduct or gross negligence as defined in s. 400.0237, F.S.
- Deletes the definition of “culpably negligent.”
- Provides that the limits of the general and professional liability insurance coverage must be not less than \$250,000 per claim and not less than \$500,000 in annual aggregate..
- Provides that no more than 10 percent of the insurance limits may be used to fund defense attorney fees and costs.
- Defines “subcontractor.”