

1 A bill to be entitled  
2 An act relating to nursing homes; amending s. 400.023,  
3 F.S.; providing legislative findings; limiting the  
4 liability of community-based nursing home facilities and  
5 their subcontractors; providing application; specifying  
6 nonapplication of limitations of liability to certain  
7 persons under certain circumstances; defining the term  
8 "community-based nursing home facility"; providing  
9 requirements to qualify as a community-based nursing home  
10 facility; requiring the Agency for Health Care  
11 Administration to verify compliance with certain required  
12 facility criteria; amending s. 633.022, F.S.; requiring  
13 nursing homes to be protected by certain automatic  
14 sprinkler systems; providing a schedule; authorizing the  
15 Division of State Fire Marshal to grant certain time  
16 extensions; authorizing the division to adopt certain  
17 rules; providing for administrative sanctions under  
18 certain circumstances; requiring adjustments to certain  
19 provider Medicaid rates for reimbursement for Medicaid's  
20 portion of costs to meet certain requirements; requiring  
21 funding for such adjustments to come from existing nursing  
22 home appropriations; creating s. 633.024, F.S.; providing  
23 legislative findings and intent; creating s. 633.0245,  
24 F.S.; authorizing the State Fire Marshal to enter into an  
25 investment agreement with public depositories to establish  
26 the State Fire Marshal Nursing Home Fire Protection Loan  
27 Guarantee Program as a limited loan guarantee program to  
28 retrofit nursing homes with fire protection systems;

29 providing investment and agreement limitations; requiring  
 30 the State Fire Marshal to solicit requests for proposals;  
 31 providing for application requirements and procedures;  
 32 providing for review and approval by the State Fire  
 33 Marshal; providing application requirements and procedures  
 34 for program loans by public depositories; providing  
 35 deadlines and limitations; limiting certain claims for  
 36 loss under certain circumstances; providing a definition;  
 37 authorizing the State Fire Marshal to adopt rules;  
 38 providing an effective date.

39

40 Be It Enacted by the Legislature of the State of Florida:

41

42 Section 1. Subsection (8) is added to section 400.023,  
 43 Florida Statutes, to read:

44 400.023 Civil enforcement.--

45 (8)(a) The Legislature makes the following findings:

46 1. Liability insurance premiums for community-based  
 47 nursing home facilities have increased dramatically in recent  
 48 years, resulting in increased nursing home care costs for most  
 49 patients and functional unavailability of liability insurance  
 50 for most community-based nursing home facilities.

51 2. The primary cause of increased liability insurance  
 52 premiums has been the substantial increase in loss payments to  
 53 claimants caused by tremendous increases in the amounts of paid  
 54 claims.

55 3. The high cost of liability claims for community-based  
 56 nursing home facilities in this state can be substantially

57 alleviated by imposing reasonable limitations on damages, while  
 58 preserving the right of either party to have its case heard by a  
 59 jury.

60 4. Excessive awards of noneconomic damages threaten the  
 61 ability of community-based nursing home facilities to continue  
 62 to provide appropriate care for patients. A reasonable  
 63 limitation on noneconomic damages will reduce the high cost of  
 64 claims without jeopardizing the right of each party to be heard  
 65 by a jury.

66 (b) In any claim against a community-based nursing home  
 67 facility or a subcontractor of the facility brought pursuant to  
 68 this part alleging a violation of a resident's rights or  
 69 negligence causing injury to or the death of a resident,  
 70 noneconomic damages, as defined in s. 766.202(8), shall be  
 71 limited to \$200,000 per claimant regardless of the number of  
 72 defendants. A claims bill may be brought on behalf of a claimant  
 73 pursuant to s. 768.28 for any amount exceeding the limits  
 74 specified in this subsection. Any offset of collateral source  
 75 payments made as of the date of the settlement or judgment shall  
 76 be in accordance with s. 768.76. A community-based facility  
 77 shall not be liable in tort for the acts or omissions of its  
 78 subcontractors or the officers, agents, or employees of its  
 79 subcontractors. The liability of a facility and subcontractors  
 80 pursuant to this subsection shall be exclusive and in place of  
 81 all other liability of such facility and subcontractors, except  
 82 as otherwise provided in this section and in s. 400.0237. The  
 83 same limitation on liability enjoyed by such facilities and  
 84 subcontractors shall extend as well to each employee of the

85 facility and the subcontractors when such employee is acting in  
 86 furtherance of the facility's business, including the  
 87 transportation of clients served in privately owned vehicles.  
 88 The limitation on liability shall not be applicable to a  
 89 facility, a subcontractor, or an employee of either who acts in  
 90 a culpably negligent manner or with willful and wanton disregard  
 91 or unprovoked physical aggression when such acts result in  
 92 injury or death or such acts proximately cause such injury or  
 93 death; nor shall the limitation on liability be applicable to  
 94 employees of the same facility or subcontractor when each is  
 95 operating in the furtherance of the facility's business but the  
 96 employees are assigned primarily to unrelated works within  
 97 private or public employment. The same limitation on liability  
 98 enjoyed by a facility and subcontractor shall also apply to any  
 99 sole proprietor, partner, corporate officer, director,  
 100 supervisor, or other person who in the course and scope of his  
 101 or her duties acts in a managerial or policymaking capacity and  
 102 the conduct that caused the alleged injury arose within the  
 103 course and scope of those managerial or policymaking duties.  
 104 "Culpably negligent" means acting with reckless indifference or  
 105 grossly careless disregard of human life.

106 (c) For the purposes of this subsection, "community-based  
 107 nursing home facility" means a nursing home facility that meets  
 108 all of the following requirements:

109 1. The number of nursing home beds in the facility may not  
 110 exceed 240.

111 2. The facility must obtain 400 hours of assistance from  
 112 onsite volunteers each month. The facility must require that

HB 1267

2005

113 volunteers sign in and out with staff of the facility upon  
114 entering or leaving the facility. The facility must maintain  
115 records of volunteers' names, addresses, and the number of hours  
116 volunteered in a manner that will enable the agency to verify  
117 compliance with this subsection.

118 3. The facility must maintain general and professional  
119 liability insurance coverage that is in force at all times with  
120 limits that are not less than \$200,000 per claim and not less  
121 than \$600,000 in annual aggregate.

122 4. The facility is a not-for-profit corporation.

123 (d) The agency shall verify compliance with paragraph (c)  
124 at the time of each inspection of a facility that claims to be  
125 community-based as defined in this subsection.

126 Section 2. Subsection (4) is added to section 633.022,  
127 Florida Statutes, to read:

128 633.022 Uniform firesafety standards.--The Legislature  
129 hereby determines that to protect the public health, safety, and  
130 welfare it is necessary to provide for firesafety standards  
131 governing the construction and utilization of certain buildings  
132 and structures. The Legislature further determines that certain  
133 buildings or structures, due to their specialized use or to the  
134 special characteristics of the person utilizing or occupying  
135 these buildings or structures, should be subject to firesafety  
136 standards reflecting these special needs as may be appropriate.

137 (4)(a) Notwithstanding any provision of law to the  
138 contrary, each nursing home licensed under part II of chapter  
139 400 shall be protected by an approved, supervised automatic  
140 sprinkler system in accordance with section 9 of National Fire

141 Protection Association, Inc., Life Safety Code, in accordance  
 142 with the following schedule:

143 1. Each hazardous area of each nursing home shall be  
 144 protected by an approved, supervised automatic sprinkler system  
 145 by no later than December 31, 2008.

146 2. Each entire nursing home shall be protected by an  
 147 approved, supervised automatic sprinkler system by no later than  
 148 December 31, 2010.

149 (b) The division may grant up to two 1-year extensions of  
 150 the time limits for compliance in subparagraph (a)2. if the  
 151 division determines that the nursing home has been prevented  
 152 from complying for reasons beyond its control.

153 (c) The division is authorized to adopt any rule necessary  
 154 for the implementation and enforcement of this subsection. The  
 155 division shall enforce this subsection in accordance with the  
 156 provisions of this chapter, and any nursing home licensed under  
 157 part II of chapter 400 that is in violation of this subsection  
 158 may be subject to administrative sanctions by the division  
 159 pursuant to this chapter.

160 (d) Adjustments shall be made to the provider Medicaid  
 161 rate to allow reimbursement over a 5-year period for Medicaid's  
 162 portion of the costs incurred to meet the requirements of this  
 163 subsection. Funding for this adjustment shall come from existing  
 164 nursing home appropriations.

165 Section 3. Section 633.024, Florida Statutes, is created  
 166 to read:

167 633.024 Legislative findings and intent; ensuring  
 168 effective fire protection of vulnerable nursing home residents

169 essential; retrofit of existing nursing homes expedited by  
170 limited state loan guarantee; funding through Insurance  
171 Regulatory Trust Fund.--

172 (1) It is the intent of the Legislature to promote the  
173 essential public purpose of ensuring effective fire protection  
174 for the safety and welfare of nursing home residents of this  
175 state who, because of their inability to protect themselves, are  
176 most vulnerable to catastrophic injury or death in the event of  
177 a fire. The Legislature finds that this purpose is served by  
178 requiring the installation of appropriate fire protection  
179 systems in all nursing home facilities in this state that do not  
180 currently have fire protection systems in operation for the  
181 protection of their residents. The Legislature finds that the  
182 high capital cost of retrofitting appropriate fire protection  
183 systems at nursing home facilities not originally designed with  
184 fire protection systems has discouraged the owners and operators  
185 of such facilities from doing so. The Legislature therefore  
186 finds that state action to provide a limited state guarantee of  
187 loans covering these capital costs will expedite the immediate  
188 installation of fire protection systems at facilities that lack  
189 such systems and thereby ensure effective protection for those  
190 nursing home populations that are now most vulnerable to the  
191 catastrophic effects of fire.

192 (2) Because the Insurance Regulatory Trust Fund is funded  
193 by the proceeds of fire insurance premiums written in this  
194 state, the Legislature finds that it is in the public interest  
195 for moneys held in the Insurance Regulatory Trust Fund to be  
196 used to fund the limited loan guarantee program that mobilizes

197 private funding for the retrofitting of fire protection systems  
 198 at unprotected nursing homes located in this state.

199 Section 4. Section 633.0245, Florida Statutes, is created  
 200 to read:

201 633.0245 State Fire Marshal Nursing Home Fire Protection  
 202 Loan Guarantee Program.--

203 (1) The State Fire Marshal, with the assistance of the  
 204 Division of Treasury of the Department of Financial Services,  
 205 may enter into an investment agreement concerning the investment  
 206 of certain funds held in the Insurance Regulatory Trust Fund for  
 207 the purpose of establishing a limited loan guarantee program to  
 208 be known as the State Fire Marshal Nursing Home Fire Protection  
 209 Loan Guarantee Program. The investment must be limited as  
 210 follows:

211 (a) Not more than \$4 million of the balance in the  
 212 Insurance Regulatory Trust Fund in any fiscal year may be at  
 213 risk at any time for the purpose of limited loan guarantees.

214 (b) Such funds at risk at any time may not be used to  
 215 guarantee any limited loan guarantee agreement for a period  
 216 longer than 10 years.

217 (c) No limited loan guarantee agreement based on invested  
 218 funds may be entered into after December 1, 2006.

219 (2) The State Fire Marshal may enter into limited loan  
 220 guarantee agreements with one or more financial institutions  
 221 qualified as public depositories in this state. Such agreements  
 222 shall provide a limited guarantee by the State of Florida  
 223 covering no more than 50 percent of the principal sum loaned by  
 224 such financial institution to an eligible nursing home, as



225 defined in subsection (10), for the sole purpose of the initial  
 226 installation at such nursing home of a fire protection system,  
 227 as defined in s. 633.021(8), approved by the State Fire Marshal  
 228 as being in compliance with the provisions of s. 633.022 and  
 229 rules adopted thereunder.

230 (3) The State Fire Marshal shall solicit requests for  
 231 proposals from qualified financial institutions willing to fund  
 232 loans to eligible nursing homes for the installation of fire  
 233 protection systems approved by the State Fire Marshal under the  
 234 State Fire Marshal Nursing Home Fire Protection Loan Guarantee  
 235 Program. Each request for proposal shall specify the terms and  
 236 conditions under which the responding institution is prepared to  
 237 make loans under the program, including, but not limited to,  
 238 applicable interest rates, repayment terms, credit policies,  
 239 loan fees, and proposed security interests to be executed by the  
 240 borrower. After evaluation of all requests for proposals, the  
 241 State Fire Marshal shall select one or more responding  
 242 institutions as designated lenders under the program.

243 (4) The State Fire Marshal shall prescribe by rule an  
 244 application form for participation in the State Fire Marshal  
 245 Nursing Home Fire Protection Loan Guarantee Program to be  
 246 submitted by each eligible nursing home that desires to install  
 247 a fire protection system funded by a loan from a designated  
 248 lender under the program. Nothing in this section shall be  
 249 deemed to require an eligible nursing home to do business with a  
 250 designated lender. At a minimum, the application shall require  
 251 each applicant to provide the following information:

252 (a) The name and address of the eligible nursing home.

253        (b) The name and address of the owner of the nursing home  
 254 or, if the owner is a partnership, the name and address of the  
 255 general partner.

256        (c) The lessee of the nursing home premises, if any.

257        (d) A complete description of the structure or structures  
 258 where the fire protection system is to be installed, including  
 259 age, physical dimensions, overall square footage, a real extent  
 260 of proposed coverage areas, and other relevant information  
 261 concerning the premises.

262        (e) Bed capacity of the nursing home, including beds  
 263 eligible for Medicare or Medicaid reimbursement.

264        (f) A statement regarding the availability to the  
 265 applicant of third-party reimbursement for installation of the  
 266 fire protection system.

267        (g) The location of closest water mains and fire hydrants,  
 268 if any.

269        (h) Complete sealed drawings showing the fire protection  
 270 system to be installed.

271        (i) Cost documentation, with a separate breakdown of cost  
 272 for labor and materials.

273        (j) Verification of the application by the applicant.

274        (5) The State Fire Marshal shall evaluate each application  
 275 submitted under this section to determine whether the proposed  
 276 fire protection system is feasible for installation as proposed  
 277 and complies with all applicable firesafety code provisions. An  
 278 application may not be approved without a positive determination  
 279 by the State Fire Marshal under this subsection. If the State  
 280 Fire Marshal is able to determine that the proposed fire

281 protection system is feasible and complies with applicable  
 282 firesafety codes, the application shall be approved for  
 283 submission to one or more lenders for funding. If the  
 284 application is insufficient, the State Fire Marshal shall notify  
 285 the applicant in writing and identify areas of deficiency that  
 286 must be corrected in order for the application to be approved.

287 (6) As soon as practicable after approval, each approved  
 288 application shall be submitted by the State Fire Marshal to one  
 289 or more designated lenders for funding. Upon request of a  
 290 designated lender, an approved applicant shall provide the  
 291 lender with documentation of its credit history and financial  
 292 status. If, after review of the applicant's documentation, a  
 293 lender refuses to fund the application, the lender shall  
 294 promptly notify the applicant and the State Fire Marshal in  
 295 writing of any reasons for its action. If the lender agrees to  
 296 fund the application, the lender shall notify the applicant and  
 297 the State Fire Marshal and schedule a closing date for the loan.

298 (7) At closing, the applicant shall execute appropriate  
 299 documents necessary to provide the lender and the State Fire  
 300 Marshal with a security interest in the property where the fire  
 301 protection system is to be installed. The State Fire Marshal  
 302 shall then execute a limited loan guarantee in favor of the  
 303 lender guaranteeing no more than 50 percent of the face value of  
 304 the loan.

305 (8) A designated lender covered by a limited state  
 306 guarantee for a loan under this section is not entitled to file  
 307 a claim for loss pursuant to the guarantee unless all reasonable  
 308 and normal remedies available and customary for lending

309 institutions for resolving problems of loan repayments are  
310 exhausted. If the lender has received collateral security in  
311 connection with the loan, the lender must first exhaust all  
312 available remedies against the collateral security.

313 (9) No application for participation in the State Fire  
314 Marshal Nursing Home Fire Protection Loan Guarantee Program may  
315 be accepted by the State Fire Marshal after June 30, 2006.

316 (10) For purposes of this section, "eligible nursing home"  
317 means a nursing home facility that provides nursing services as  
318 defined in chapter 464, is licensed under part II of chapter  
319 400, and is certified by the Agency for Health Care  
320 Administration to lack an installed fire protection system as  
321 defined in s. 633.021(8).

322 (11) The State Fire Marshal may adopt any rules necessary  
323 to implement the provisions of this section.

324 Section 5. This act shall take effect July 1, 2005.