

## ENROLLED

HB 1267, Engrossed 1

2005 Legislature

1                                   A bill to be entitled  
2           An act relating to nursing homes; amending s. 400.23,  
3           F.S.; providing for alternative bed locations in nursing  
4           home rooms and providing criteria for bed placement;  
5           requiring a signed statement from the resident or  
6           representative if the alternative bed placement is not in  
7           compliance with the Florida Building Code; requiring the  
8           facility to maintain a log of alternative bed placements  
9           and to retain the signed statements; requiring the nursing  
10          home to notify the Agency for Health Care Administration  
11          with respect to such practice; amending s. 633.022, F.S.;  
12          requiring nursing homes to be protected by certain  
13          automatic sprinkler systems; providing a schedule;  
14          authorizing the Division of State Fire Marshal to grant  
15          certain time extensions; authorizing the division to adopt  
16          certain rules; providing for administrative sanctions  
17          under certain circumstances; requiring adjustments to  
18          certain provider Medicaid rates for reimbursement for  
19          Medicaid's portion of costs to meet certain requirements;  
20          requiring funding for such adjustments to come from  
21          existing nursing home appropriations; creating s. 633.024,  
22          F.S.; providing legislative findings and intent; creating  
23          s. 633.0245, F.S.; authorizing the State Fire Marshal to  
24          enter into an investment agreement with public  
25          depositories to establish the State Fire Marshal Nursing  
26          Home Fire Protection Loan Guarantee Program as a limited  
27          loan guarantee program to retrofit nursing homes with fire  
28          protection systems; providing investment and agreement

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

39

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

41

42 | Section 1. Paragraph (a) of subsection (2) of section  
43 | 400.23, Florida Statutes, is amended to read:

44 | 400.23 Rules; evaluation and deficiencies; licensure  
45 | status.--

46 | (2) Pursuant to the intention of the Legislature, the  
47 | agency, in consultation with the Department of Health and the  
48 | Department of Elderly Affairs, shall adopt and enforce rules to  
49 | implement this part, which shall include reasonable and fair  
50 | criteria in relation to:

51 | (a) The location of the facility and housing conditions  
52 | that will ensure the health, safety, and comfort of residents,  
53 | including an adequate call system. In making such rules, the  
54 | agency shall be guided by criteria recommended by nationally  
55 | recognized reputable professional groups and associations with  
56 | knowledge of such subject matters. The agency shall update or

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57 | revise such criteria as the need arises. The agency may require  
58 | alterations to a building if it determines that an existing  
59 | condition constitutes a distinct hazard to life, health, or  
60 | safety. In performing any inspections of facilities authorized  
61 | by this part, the agency may enforce the special-occupancy  
62 | provisions of the Florida Building Code and the Florida Fire  
63 | Prevention Code which apply to nursing homes. Residents or their  
64 | representatives shall be able to request a change in the  
65 | placement of the bed in their room, provided that at admission  
66 | they are presented with a room that meets requirements of the  
67 | Florida Building Code. The location of a bed may be changed if  
68 | the requested placement does not infringe on the resident's  
69 | roommate or interfere with the resident's care or safety as  
70 | determined by the care planning team in accordance with facility  
71 | policies and procedures. In addition, the bed placement may not  
72 | be used as a restraint. Each facility shall maintain a log of  
73 | resident rooms with beds that are not in strict compliance with  
74 | the Florida Building Code in order for such log to be used by  
75 | surveyors and nurse monitors during inspections and visits. Any  
76 | resident or resident representative who requests that a bed be  
77 | moved shall sign a statement indicating that they understand the  
78 | room will not be in compliance with the Florida Building Code,  
79 | but they would prefer to exercise their right to self-  
80 | determination. The statement must be retained as part of the  
81 | resident's care plan. Any facility that offers this option shall  
82 | notify the agency of this practice by submitting a letter signed  
83 | by the nursing home administrator of record and a copy of the  
84 | facility's policies and procedures. The agency is directed to

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85 | provide assistance to the Florida Building Commission in  
 86 | updating the construction standards of the code relative to  
 87 | nursing homes.

88 |       Section 2. Subsection (4) is added to section 633.022,  
 89 | Florida Statutes, to read:

90 |       633.022 Uniform firesafety standards.--The Legislature  
 91 | hereby determines that to protect the public health, safety, and  
 92 | welfare it is necessary to provide for firesafety standards  
 93 | governing the construction and utilization of certain buildings  
 94 | and structures. The Legislature further determines that certain  
 95 | buildings or structures, due to their specialized use or to the  
 96 | special characteristics of the person utilizing or occupying  
 97 | these buildings or structures, should be subject to firesafety  
 98 | standards reflecting these special needs as may be appropriate.

99 |       (4) (a) Notwithstanding any provision of law to the  
 100 | contrary, each nursing home licensed under part II of chapter  
 101 | 400 shall be protected by an approved, supervised automatic  
 102 | sprinkler system in accordance with section 9 of National Fire  
 103 | Protection Association, Inc., Life Safety Code, in accordance  
 104 | with the following schedule:

105 |       1. Each hazardous area of each nursing home shall be  
 106 | protected by an approved, supervised automatic sprinkler system  
 107 | by no later than December 31, 2008.

108 |       2. Each entire nursing home shall be protected by an  
 109 | approved, supervised automatic sprinkler system by no later than  
 110 | December 31, 2010.

111 |       (b) The division may grant up to two 1-year extensions of  
 112 | the time limits for compliance in subparagraph (a)2. if the

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113 division determines that the nursing home has been prevented  
 114 from complying for reasons beyond its control.

115 (c) The division is authorized to adopt any rule necessary  
 116 for the implementation and enforcement of this subsection. The  
 117 division shall enforce this subsection in accordance with the  
 118 provisions of this chapter, and any nursing home licensed under  
 119 part II of chapter 400 that is in violation of this subsection  
 120 may be subject to administrative sanctions by the division  
 121 pursuant to this chapter.

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

127 Section 3. Section 633.024, Florida Statutes, is created  
 128 to read:

129 633.024 Legislative findings and intent; ensuring  
 130 effective fire protection of vulnerable nursing home residents  
 131 essential; retrofit of existing nursing homes expedited by  
 132 limited state loan guarantee; funding through Insurance  
 133 Regulatory Trust Fund.--

134 (1) It is the intent of the Legislature to promote the  
 135 essential public purpose of ensuring effective fire protection  
 136 for the safety and welfare of nursing home residents of this  
 137 state who, because of their inability to protect themselves, are  
 138 most vulnerable to catastrophic injury or death in the event of  
 139 a fire. The Legislature finds that this purpose is served by  
 140 requiring the installation of appropriate fire protection

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141 systems in all nursing home facilities in this state that do not  
142 currently have fire protection systems in operation for the  
143 protection of their residents. The Legislature finds that the  
144 high capital cost of retrofitting appropriate fire protection  
145 systems at nursing home facilities not originally designed with  
146 fire protection systems has discouraged the owners and operators  
147 of such facilities from doing so. The Legislature therefore  
148 finds that state action to provide a limited state guarantee of  
149 loans covering these capital costs will expedite the immediate  
150 installation of fire protection systems at facilities that lack  
151 such systems and thereby ensure effective protection for those  
152 nursing home populations that are now most vulnerable to the  
153 catastrophic effects of fire.

154 (2) Because the Insurance Regulatory Trust Fund is funded  
155 by the proceeds of fire insurance premiums written in this  
156 state, the Legislature finds that it is in the public interest  
157 for moneys held in the Insurance Regulatory Trust Fund to be  
158 used to fund the limited loan guarantee program that mobilizes  
159 private funding for the retrofitting of fire protection systems  
160 at unprotected nursing homes located in this state.

161 Section 4. Section 633.0245, Florida Statutes, is created  
162 to read:

163 633.0245 State Fire Marshal Nursing Home Fire Protection  
164 Loan Guarantee Program.--

165 (1) The State Fire Marshal, with the assistance of the  
166 Division of Treasury of the Department of Financial Services,  
167 may enter into an investment agreement concerning the investment  
168 of certain funds held in the Insurance Regulatory Trust Fund for

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169 the purpose of establishing a limited loan guarantee program to  
170 be known as the State Fire Marshal Nursing Home Fire Protection  
171 Loan Guarantee Program. The investment must be limited as  
172 follows:

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

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

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

181 (2) The State Fire Marshal may enter into limited loan  
182 guarantee agreements with one or more financial institutions  
183 qualified as public depositories in this state. Such agreements  
184 shall provide a limited guarantee by the State of Florida  
185 covering no more than 50 percent of the principal sum loaned by  
186 such financial institution to an eligible nursing home, as  
187 defined in subsection (10), for the sole purpose of the initial  
188 installation at such nursing home of a fire protection system,  
189 as defined in s. 633.021(8), approved by the State Fire Marshal  
190 as being in compliance with the provisions of s. 633.022 and  
191 rules adopted thereunder.

192 (3) The State Fire Marshal shall solicit requests for  
193 proposals from qualified financial institutions willing to fund  
194 loans to eligible nursing homes for the installation of fire  
195 protection systems approved by the State Fire Marshal under the  
196 State Fire Marshal Nursing Home Fire Protection Loan Guarantee

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197 Program. Each request for proposal shall specify the terms and  
198 conditions under which the responding institution is prepared to  
199 make loans under the program, including, but not limited to,  
200 applicable interest rates, repayment terms, credit policies,  
201 loan fees, and proposed security interests to be executed by the  
202 borrower. After evaluation of all requests for proposals, the  
203 State Fire Marshal shall select one or more responding  
204 institutions as designated lenders under the program.

205 (4) The State Fire Marshal shall prescribe by rule an  
206 application form for participation in the State Fire Marshal  
207 Nursing Home Fire Protection Loan Guarantee Program to be  
208 submitted by each eligible nursing home that desires to install  
209 a fire protection system funded by a loan from a designated  
210 lender under the program. Nothing in this section shall be  
211 deemed to require an eligible nursing home to do business with a  
212 designated lender. At a minimum, the application shall require  
213 each applicant to provide the following information:

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

215 (b) The name and address of the owner of the nursing home  
216 or, if the owner is a partnership, the name and address of the  
217 general partner.

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

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



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

226       (f) A statement regarding the availability to the  
227 applicant of third-party reimbursement for installation of the  
228 fire protection system.

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

231       (h) Complete sealed drawings showing the fire protection  
232 system to be installed.

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

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

236       (5) The State Fire Marshal shall evaluate each application  
237 submitted under this section to determine whether the proposed  
238 fire protection system is feasible for installation as proposed  
239 and complies with all applicable firesafety code provisions. An  
240 application may not be approved without a positive determination  
241 by the State Fire Marshal under this subsection. If the State  
242 Fire Marshal is able to determine that the proposed fire  
243 protection system is feasible and complies with applicable  
244 firesafety codes, the application shall be approved for  
245 submission to one or more lenders for funding. If the  
246 application is insufficient, the State Fire Marshal shall notify  
247 the applicant in writing and identify areas of deficiency that  
248 must be corrected in order for the application to be approved.

249       (6) As soon as practicable after approval, each approved  
250 application shall be submitted by the State Fire Marshal to one  
251 or more designated lenders for funding. Upon request of a

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252 designated lender, an approved applicant shall provide the  
 253 lender with documentation of its credit history and financial  
 254 status. If, after review of the applicant's documentation, a  
 255 lender refuses to fund the application, the lender shall  
 256 promptly notify the applicant and the State Fire Marshal in  
 257 writing of any reasons for its action. If the lender agrees to  
 258 fund the application, the lender shall notify the applicant and  
 259 the State Fire Marshal and schedule a closing date for the loan.

260 (7) At closing, the applicant shall execute appropriate  
 261 documents necessary to provide the lender and the State Fire  
 262 Marshal with a security interest in the property where the fire  
 263 protection system is to be installed. The State Fire Marshal  
 264 shall then execute a limited loan guarantee in favor of the  
 265 lender guaranteeing no more than 50 percent of the face value of  
 266 the loan.

267 (8) A designated lender covered by a limited state  
 268 guarantee for a loan under this section is not entitled to file  
 269 a claim for loss pursuant to the guarantee unless all reasonable  
 270 and normal remedies available and customary for lending  
 271 institutions for resolving problems of loan repayments are  
 272 exhausted. If the lender has received collateral security in  
 273 connection with the loan, the lender must first exhaust all  
 274 available remedies against the collateral security.

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

278 (10) For purposes of this section, "eligible nursing home"  
 279 means a nursing home facility that provides nursing services as

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280 defined in chapter 464, is licensed under part II of chapter  
281 400, and is certified by the Agency for Health Care  
282 Administration to lack an installed fire protection system as  
283 defined in s. 633.021(8).

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

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