

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: CS/SB 240

SPONSOR: Health Care Committee and Senator Lynn

SUBJECT: Emergency Electrical Service in Nursing Home Facilities

DATE: January 13, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/CS</u>
2.	_____	_____	<u>DS</u>	_____
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires the Agency for Health Care Administration (AHCA) to adopt rules to require nursing homes to have an on-site emergency electrical system that is in compliance with the Florida Building Code and that can provide the resident occupied areas of the facility with sufficient electrical power to keep the facility within normal operational parameters for a period of up to 72 hours when the normal electrical service has been interrupted. The bill requires the Medicaid rate for providers to be adjusted to allow reimbursement over a 5-year period for the Medicaid portion of the costs incurred by nursing homes to meet the requirements for emergency generators.

The bill requires companies that supply electrical power to restore power to nursing home facilities as expeditiously as possible, and if power is not restored, nursing homes must have priority for state provision of a generator. The bill requires the state and county Emergency Operations Centers to designate a local nursing home representative to serve as a liaison to other nursing home facilities and to recommend to the local emergency operations center those nursing homes that should receive priority for power restoration or generator power.

The bill provides that if federal disaster funds are available that could be used by the state to purchase generators, the state should use the funds to purchase generators that could be loaned to nursing homes that lose electrical power during a hurricane or other disaster.

This bill amends s. 400.23, F.S.

II. Present Situation:

Experience of Nursing Homes during the Hurricane Season of 2004

Every county in Florida was affected by a hurricane or tropical storm, or was under a declared state of emergency because of such a storm, in 2004. Counties in the South Central part of the state suffered direct hits from three hurricanes, and two coastal Panhandle counties received extensive damage from a direct hit from a powerful hurricane accompanied by surge. While the state's after-action reports concerning the emergency response to these storms have not been published, individuals who worked to respond to the emergencies have reported that some nursing homes did not have generators, some did not have personnel who knew how to use the generator, and some residents suffered from the absence of air conditioning even though a generator supplied electricity for certain core functions of the nursing home.

Emergency Management

Under s. 252.35, F.S., the Division of Emergency Management in the Department of Community Affairs is responsible for maintaining a comprehensive statewide program of emergency management and for coordinating with efforts of the Federal Government, other departments and agencies of state government, county and municipal governments and school boards, and private agencies that have a role in emergency management.

Under s. 400.23(2)(g), F.S., AHCA must adopt rules establishing minimum criteria for the preparation and annual update of a nursing home's comprehensive emergency management plan after consultation with the Department of Community Affairs. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; post-disaster activities, including emergency power, food, and water; post-disaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. The comprehensive emergency management plan is subject to review and approval by the local emergency management agency. During its review, the local emergency management agency must ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Elderly Affairs, the Department of Health, the Agency for Health Care Administration, and the Department of Community Affairs. Also, appropriate volunteer organizations must be given the opportunity to review the plan. The local emergency management agency must complete its review within 60 days and either approve the plan or advise the facility of necessary revisions.

Rule 59A-4.126, F.A.C., incorporates by reference a publication (AHCA 3110-6006, March 1994) which lists the minimum criteria for a nursing home's emergency management plan. The emergency management plan must state the procedures to ensure that emergency power, whether natural gas or diesel, is supplied to the nursing home. If the fuel supply is natural gas, the plan must identify alternate means should loss of power occur that would affect the natural gas system. The plan must state the capacity of the emergency fuel system.

The Florida Building Code

Part IV of ch. 553, F.S., creates the Florida Building Commission and requires the commission to adopt by rule the Florida Building Code. Under s. 553.73, F.S., the Florida Building Code must contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in that section.

The Florida Fire Prevention Code

Section 633.0215, F.S., requires the State Fire Marshal to adopt, by rule pursuant to ss. 120.536(1) and 120.54, F.S., the Florida Fire Prevention Code which must contain or incorporate by reference all fire safety laws and rules that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules. The State Fire Marshal must adopt a new edition of the Florida Fire Prevention Code every third year. This section requires the State Fire Marshal to adopt the National Fire Protection Association's Standard 1, Fire Prevention Code.

Under s. 633.022, F.S., the Department of Financial Services must establish uniform fire safety standards that apply to all new, existing, and proposed hospitals, nursing homes, assisted living facilities, adult family-care homes, correctional facilities, public schools, transient public lodging establishments, public food service establishments, elevators, migrant labor camps, mobile home parks, lodging parks, recreational vehicle parks, recreational camps, residential and nonresidential child care facilities, facilities for the developmentally disabled, motion picture and television special effects productions, and self-service gasoline stations. The State Fire Marshal is the final administrative interpreting authority for those standards.

Requirements for Nursing Home Licensure

Nursing homes are licensed under part II of ch. 400, F.S. Under s. 400.232, F.S., the design, construction, erection, alteration, modification, repair, and demolition of all public and private health care facilities are governed by the Florida Building Code and the Florida Fire Prevention Code under ss. 553.73 and 633.022, F.S. In addition to the requirements of ss. 553.79 and 553.80, F.S., which govern permits, applications, issuance, inspections, and enforcement, AHCA must review the facility plans and survey the construction of nursing homes.

Since July 1982, all nursing home facilities licensed under part II of ch. 400, F.S., have been required to have an onsite Essential Electrical System (EES) with an onsite fuel supply of up to 64 hours. The design, installation, operation and maintenance of this EES is reviewed by AHCA. The EES must meet the minimum codes and standards of the National Fire Protection Association (NFPA) 99, 70, and 110 as adopted by the state fire marshal, for a Level I Type I EES. This EES supplies electrical service to the three main electrical branches including the Life Safety Branch, the Critical Branch, and the Equipment Branch within 10 seconds of normal service interruption. As required by the NFPA standards, these emergency electrical branches provide emergency electrical service to specified electrical components of the facility such as the

fire alarm system, the nurse call system, the emergency egress lighting system, the exit lighting system, the magnetic door locking system, and selected critical convenience receptacles and equipment in the facility. However, the EES is not required to provide electrical service to the Heating, Ventilation, and Air Conditioning (HVAC) equipment of the facility nor to the general lighting or other electrical items not specifically required by the NFPA codes and standards.

In addition, since 1996, all new nursing home facilities and new additions to these facilities have been required to have an EES that supplies electrical power to all ventilating fans, ice making equipment, refrigeration equipment, and selected HVAC equipment as determined by the facility, for a period up to 72 hours of continuous service at actual load capacity of the generator. Since 2000, all of these codes and standards have been part of the Florida Building Code chapter 4, section 420 as required by ch. 553, F.S. All new codes and standards and all revisions to the existing codes and standards affecting the physical plant of nursing home facilities are the sole responsibility of the Florida Building Commission. The Florida Building Code is not subject to waiver or variance via ch. 120, F.S.

Presently, all public record documents submitted to AHCA for construction review must be signed, sealed, and dated by a licensed architect or engineer in conformance with the Department of Business and Professional Regulation (DBPR) requirements for architects and engineers. Currently nursing homes, and other licensees, are not given the ability to challenge AHCA's rejection of a plan of correction under ch. 120, F.S.

Of the 669 existing licensed nursing home facilities, there are 30 facilities constructed prior to 1982 that do not have an existing onsite generator system. These facilities house only residents who do not require any life support systems, and as such, these facilities are in compliance with all state and federal codes and standards through the use of a battery supplied emergency electrical system that supplies emergency power to the life safety components of the facility as required by NFPA 99 for 1½ hours duration. These components include the fire alarm, nurse call, emergency egress lighting, exit lighting, and locking systems.

III. Effect of Proposed Changes:

Section 1. Amends s. 400.23(2)(d), F.S., to require AHCA's rules for nursing home equipment to require an on-site emergency electrical system that can provide the resident occupied areas of the facility with sufficient electrical power to keep the facility within normal operational parameters for a period of up to 72 hours when the normal electrical service has been interrupted. This emergency electrical equipment must be in compliance with the Florida Building Code for nursing homes. Nursing homes licensed before July 1, 2005, must be in compliance with the requirement by July 1, 2006.

Section 2. Requires companies that supply electrical power to restore power to nursing home facilities as expeditiously as possible. If power restoration is not done in a timely manner, nursing homes must have priority for state provision of a generator. The state and county Emergency Operations Centers are required to designate a local nursing home representative to serve as a liaison to nursing home facilities in the impacted areas and to monitor the status of the residents in those facilities. If a facility has high-acuity residents who are dependent on electric assistive devices or if the health and safety of the residents in building are threatened because of

the lack of electrical power, the nursing home representative must recommend to the local emergency operations center that those nursing homes receive priority for power restoration or generator power.

Section 3. Provides that if federal disaster funds are available that could be used by the state to purchase generators, the state should use the funds to purchase generators that could be loaned to nursing homes that lose electrical power during a hurricane or other disaster.

Section 4. Requires the Medicaid rate for providers to be adjusted to allow reimbursement over a 5-year period for the Medicaid portion of the costs incurred by nursing homes to meet the requirements for emergency generators.

Section 5. Provides that the bill will take effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

AHCA estimates that there are 639 existing nursing home facilities that have electrical generators, but the generators are not sized to meet the requirements of the bill. In addition, there are 30 existing nursing home facilities that are not equipped with any emergency generator. AHCA estimates that it will cost \$60.5 million to install emergency generators to comply with this bill. In the future, the requirements of the bill will add additional costs to all new nursing home facilities and replacement facilities.

The bill will require the 30 existing facilities that do not have emergency generators to install an onsite EES supplied by a generator. For these designs and installations to be

compliant with new codes and standards, these facilities will require a complete renovation of the electrical system and the installation of new EES electrical branches and transfer switches. The estimated cost of this work is approximately \$350,000 per facility. Because some of these facilities are small, the Florida Building Code requirements affecting percentage of renovations completed within one year may be applied to this work. This will mean some of these facilities would have to meet all new codes and standards per the Florida Building Code. This in turn would mean a complete building-wide renovation and rebuilding of the facility or if this was not possible, the design and construction of a completely new replacement facility. The total minimum cost to install these generators in these 30 facilities is estimated at \$10.5 million.

Of the 639 remaining licensed nursing home facilities, this bill requires additional loads be placed on the facility to operate all or a designated part of the facility's electrical system via the EES for up to 72 hours. Although these facilities already have an emergency generator and EES, these systems are not designed to be in compliance with the requirements of this bill. Considering there are 84,000 existing nursing home beds in these facilities (less the beds contained in the 30 facilities without generators), an overall cost to these nursing home facilities to comply with this act is estimated at \$50 million.

C. Government Sector Impact:

The fiscal impact for AHCA is unknown at this time. The agency would incur workload increases in the Plans and Construction office (for plan review, on-site inspections and testimony at hearing); Field Operations office (for on-site inspections, handling of complaints and testimony at hearing); and Legal office (for handling of litigation).

The estimated cost to Medicaid is \$7,623,000 per year, over a 5-year period. Of this amount, \$3,125,430 would be from the General Revenue Fund (State) and the remaining \$4,497,570 would come from the Medical Care Trust Fund (Federal). This calculation assumes that all nursing home facilities will have an emergency generator installed and functioning within the appropriate timeframes based upon date of licensure. All nursing homes that receive Medicaid funds will have their Medicaid rates adjusted over a 5-year period to allow for reimbursement for Medicaid's portion of the costs incurred to meet the new requirements. The affected facilities will be required to submit their cost information to AHCA upon completion of the emergency generator installation. Upon receipt of proper documentation of costs, AHCA will begin the 5-year reimbursement for those costs. Current reimbursement methodologies do not allow for 5-year reimbursement periods for individual items, therefore, reimbursement for the emergency generators will be in the form of an add-on to the final Medicaid per diem rate.

Under current cost reporting methods, the installation of emergency generators is a major purchase and considered a capital improvement. These items are classified as property costs and are reported on Schedule T "Capital Additions and Improvements" in the nursing home facility's cost report. For nursing homes reimbursed under the Fair Rental Value System (FRVS), the cost to install the emergency generators is added to the property indexing and becomes part of the property component of the final reimbursement per diem. Since reimbursement for the emergency generators will be

reimbursed as an add-on during the 5-year period, nursing homes being reimbursed under FRVS will not be allowed to report the costs for the emergency generators on the Schedule T of their cost report. Nursing homes not reimbursed under FRVS will need to adjust out the costs of the required installation from their cost report. This will keep the facilities from being reimbursed twice for the generators. In addition, no facility will be eligible for an interim rate increase due to the costs incurred for the required generators.

VI. Technical Deficiencies:

By requiring a nursing home to have a generator to supply power to the resident occupied areas of the facility and requiring sufficient electrical power to keep the facility within normal operational parameters, the bill could be interpreted to require a nursing home to have a generator that could keep the entire facility operating. If, instead, the bill required a nursing home to have a generator to supply power to the “occupied resident areas” as defined in the Florida Building Code and to keep those areas within normal operational parameters, a nursing home’s generator would have to provide power to areas where residents are located during and immediately following a disaster and would have the option of relocating residents to a portion of the facility served by the generator. Such a requirement would have the effect of lowering the costs associated with the bill.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
