

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Jones offered the following:

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3 **Amendment to Amendment (397883) (with title amendment)**

4 Between lines 181 and 182, insert:

5 Section 4. Section 400.1411, Florida Statutes, is created
6 to read:

7 400.1411 Financial responsibility.-

8 (1) As a condition of licensing and maintaining an active
9 license, and prior to the issuance or renewal of an active
10 license or reactivation of an inactive license for operating a
11 nursing home facility in this state, an applicant must, by one
12 of the following methods, demonstrate to the satisfaction of the
13 agency and the former Department of Insurance financial
14 responsibility to pay claims and costs ancillary thereto arising
15 out of the rendering of, or the failure to render, care or
16 services:

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17 (a) Establishing and maintaining an escrow account
18 consisting of cash or assets eligible for deposit in accordance
19 with s. 625.52 in the per claim amounts specified in paragraph
20 (b). The required escrow amount set forth in this paragraph may
21 not be used for litigation costs and attorneys' fees for the
22 defense of any claim maintained pursuant to common law, s.
23 400.23, or s. 400.0233.

24 (b) Obtaining and maintaining general and professional
25 liability coverage in an amount not less than \$500,000 per
26 claim, with a minimum annual aggregate of not less than \$1
27 million from an authorized insurer as defined under s. 624.09,
28 from a surplus lines insurer as defined under s. 626.914(2),
29 from a risk retention group as defined under s. 627.942, or
30 through a plan of self-insurance as defined in s. 627.357.
31 However, any nursing home facility that obtains general and
32 professional liability insurance coverage from a risk retention
33 group as defined under s. 627.942 is only required to maintain
34 general and professional liability insurance coverage in an
35 amount not less than \$250,000 per claim, with a minimum annual
36 aggregate of not less than \$500,000. Furthermore, any nursing
37 home facility that has been awarded a Gold Seal under the
38 program established in s. 400.235 is only required to maintain
39 general and professional liability insurance coverage in an
40 amount not less than \$250,000 per claim, with a minimum annual
41 aggregate of not less than \$500,000, from an authorized insurer
42 as defined under s. 626.914(2), from a risk retention group as
43 defined under s. 627.942, or through a plan of self-insurance as
44 defined in s. 627.357. The required coverage amount set forth in

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45 this paragraph may not be used for litigation costs and
46 attorneys' fees for the defense of any claim maintained pursuant
47 to common law, s. 400.023, or s. 400.0233.

48 (c) Obtaining and maintaining an unexpired, irrevocable
49 letter of credit, established pursuant to chapter 675, in an
50 amount not less than \$500,000 per claim, with a minimum
51 aggregate availability of credit not less than \$1 million.
52 However, any nursing home facility that has been awarded a Gold
53 Seal under the program established in s. 400.235 is only
54 required to maintain an unexpired, irrevocable letter of credit,
55 established pursuant to chapter 675, in an amount not less than
56 \$250,000 per claim, with a minimum annual aggregate of
57 availability of credit not less than \$500,000. The letter of
58 credit must be payable to the nursing home facility as
59 beneficiary upon presentment of a final judgment indicating
60 liability and awarding damages to be paid by the nursing home
61 facility or upon presentment of a settlement agreement signed by
62 all parties to such agreement when such final judgment or
63 settlement is a result of a claim arising out of the rendering
64 of, or the failure to render, care and services. The letter of
65 credit shall not be used for litigation costs and attorneys'
66 fees for the defense of any claim maintained pursuant to common
67 law, s. 400.023, or s. 400.0233. The letter of credit must be
68 nonassignable and nontransferable. Such letter of credit must be
69 issued by a bank or savings association organized and existing
70 under the laws of this state or any bank or savings association
71 organized under the laws of the United States that has its
72 principal place of business in this state or has a branch office

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73 that is authorized under the laws of this state or of the United
74 States to receive deposits in this state.

75 (2) (a) Each insurer, self-insurer, or risk retention group
76 must promptly notify the agency and the former Department of
77 Insurance of cancellation or nonrenewal of insurance required by
78 this section. Unless the nursing home facility demonstrates that
79 it is otherwise in compliance with the requirements of this
80 section, the agency shall suspend the license of the nursing
81 home facility. Any suspension under this subsection remains in
82 effect until the nursing home facility demonstrates compliance
83 with the requirements of this section. If any judgments or
84 settlements are pending at the time of suspension of the
85 license, those judgments or settlements must be paid in
86 accordance with this section unless otherwise mutually agreed to
87 in writing by the parties. This paragraph does not arrogate a
88 judgment debtor's obligation to satisfy the entire amount of any
89 judgment.

90 (b) If financial responsibility requirements are met by
91 maintaining an escrow account or letter of credit as provided in
92 this section, upon the entry of an adverse final judgment
93 arising from a claim maintained in contract or in tort pursuant
94 to common law, s. 400.023, or s. 400.0233, or from noncompliance
95 with the terms of a settlement agreement arising from a claim
96 maintained in contract or in tort pursuant to common law, s.
97 400.023, or s. 400.0233, the licensee of the nursing home
98 facility, the nursing home facility, or the entity that owns,
99 operates, manages, or controls the nursing home facility shall
100 pay the entire amount of the judgment together with all accrued

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101 interest or the amount maintained in the escrow account or
102 provided in the letter of credit as required by this section,
103 whichever is less, within 60 days after the date such judgment
104 became final and subject to execution, unless otherwise mutually
105 agreed to in writing by the parties. If timely payment is not
106 made by the licensee of the nursing home facility, the nursing
107 home facility or the entity that owns, operates, manages, or
108 controls the nursing home facility, the agency shall suspend the
109 license of the nursing home facility. This paragraph does not
110 abrogate a judgment debtor's obligation to satisfy the entire
111 amount of any judgment.

112 (3) Upon the entry of an adverse final judgment arising
113 from a claim maintained in contract or in tort pursuant to
114 common law, s. 400.023, s. 400.0233, or from noncompliance with
115 the terms of a settlement agreement arising from a claim
116 maintained in contract or in tort pursuant to common law, s.
117 400.023, or s. 400.0233, the licensee of the nursing home
118 facility, the nursing home facility, or the entity that owns,
119 operates, manages or controls the nursing home facility shall
120 pay the judgment creditor the lesser of the entire amount of the
121 judgment with all accrued interest or the per claim amounts
122 specified in paragraph (1)(b), within 60 days after the date
123 such judgment became final and subject to execution, unless
124 otherwise mutually agreed to in writing by the parties. Such
125 adverse final judgment shall include any cross-claims,
126 counterclaims, or claim for indemnity or contribution arising
127 from the claim maintained in contract or in tort pursuant to
128 common law, s. 400.023, or s. 400.0233. This subsection does not

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129 abrogate a judgment debtor's obligation to satisfy the entire
130 amount of any judgment. Upon notification of the existence of an
131 unsatisfied judgment or payment pursuant to this subsection, the
132 agency shall notify the nursing home facility by certified mail
133 that its license shall be suspended unless, within 30 days from
134 the date of mailing, the facility either:

135 (a) Shows proof that the unsatisfied judgment has been
136 paid in the amount specified in this subparagraph; or

137 (b) Furnishes the department with a copy of a timely filed
138 notice of appeal and either:

139 1. A copy of a supersedeas bond properly posted in the
140 amount required by law; or

141 2. An order from a court of competent jurisdiction staying
142 execution on the final judgment pending disposition of the
143 appeal.

144 (c) The agency shall issue an emergency order suspending
145 the license of any nursing home facility who, after 30 days
146 following receipt of a notice from the agency, has failed to:

147 1. Satisfy a claim maintained in contract or in tort
148 pursuant to common law, s. 400.023, or s. 400.0233 against it in
149 accordance with subsection (6);

150 2. Furnish the agency with a copy of a timely filed notice
151 of appeal;

152 3. Furnish the agency with a copy of a supersedeas bond
153 properly posted in the amount required by law; or

154 4. Furnish the agency with an order from a court of
155 competent jurisdiction staying execution on the final judgment
156 pending disposition of the appeal.

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157 (4) Any deceptive, untrue, or fraudulent representation by
158 the nursing home facility with respect to any provision of this
159 section shall result in permanent disqualification from any
160 exemption to mandated financial responsibility as provided in
161 this section and the immediate suspension of the license of the
162 nursing home facility.

163 (5) Any nursing home facility that is exempt from the
164 financial responsibility requirement shall notify the agency, in
165 writing, of any change of circumstance regarding its
166 qualifications for such exemption and shall demonstrate that it
167 is in compliance with the requirements of this section.

168 (6) The agency shall adopt rules to implement this
169 section.

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T I T L E A M E N D M E N T

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Remove line 209 and insert:

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entities; creating s. 400.1411, F.S.; requiring maintenance of

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an escrow account, liability insurance coverage, or an

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irrevocable letter of credit as a condition of licensure for

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nursing home facilities; providing requirements and procedures

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thereto; providing for payment of any outstanding judgments or

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settlements pending at the time the license of a nursing home

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facility is suspended by the Agency for Health Care

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Administration; requiring the agency to adopt rules; providing

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applicability; providing for

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