

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: Banking and Insurance Committee

BILL: SB 266

SPONSOR: Senator Saunders

SUBJECT: Nursing Home Facilities

DATE: March 9, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Wilson</u>	<u>HE</u>	Favorable
2.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Under current law, with one exception, all licensed nursing home facilities in Florida must maintain general and professional liability insurance that is in force at all times. The exception to this requirement applies to a state-designated teaching nursing home and its affiliated assisted living facilities. In lieu of obtaining liability insurance, a teaching nursing home and its affiliated facilities must demonstrate proof of financial responsibility by maintaining a minimum amount of \$750,000 that may include maintaining an escrow account consisting of certain cash or assets or maintaining an unexpired, irrevocable, nontransferable and nonassignable letter of credit. This exception expires on July 1, 2005.

Senate Bill 266 deletes the exception's July expiration date, thus making permanent the insurance exception that has been granted to a state-designated teaching nursing home and its affiliated assisted living facilities. The Miami Jewish Home and Hospital for the Aged is the only state-designated teaching nursing home in the state.

This bill amends s. 400.141, F.S.

II. Present Situation:

Section 430.80, F.S., authorizes the implementation of a teaching nursing home pilot project. The statute defines *teaching nursing home* as a nursing home facility licensed under ch. 400, F.S., which contains a minimum of 400 licensed nursing home beds; has access to a resident senior population of sufficient size to support education, training, and research relating to geriatric care; and has a contractual relationship with a federally-funded, accredited geriatric research center in Florida. The Miami Jewish Home and Hospital for the Aged was licensed in

July 2000 as a teaching nursing home and it remains the only nursing home so designated in Florida.

Under s. 430.80(3)(h), F.S., the teaching nursing home must maintain insurance coverage pursuant to s. 400.141(20), F.S., *or* demonstrate proof of financial responsibility in a minimum amount of \$750,000. Such proof of financial responsibility may include:

- Maintaining an escrow account consisting of cash or assets eligible for deposit in accordance with s. 625.52, F.S., which specifies the types of securities that are eligible for deposit by insurers and agents to meet requirements to transact insurance in this state; *or*
- Obtaining and maintaining pursuant to ch. 675, F.S., an unexpired, irrevocable, nontransferable and nonassignable letter of credit issued by any bank or savings association organized and existing under the laws of Florida or any bank or savings association organized under the laws of the United States that has its principal place of business in Florida or has a branch office which is authorized to receive deposits in Florida. The letter of credit must be used to satisfy the obligation of the facility to the claimant upon presentment of a final judgment indicating liability and awarding damages to be paid by the facility or upon presentment of a settlement agreement signed by all parties to the agreement when such final judgment or settlement is a result of a liability claim against the facility.

Under s. 400.141(20), F.S., a nursing home must maintain general and professional liability insurance coverage that is in force at all times. However, the law does not specify the minimum amount of coverage which is required. A teaching nursing home must maintain insurance coverage *or* demonstrate proof of financial responsibility as required in s. 430.80(3)(h), F.S. This exception, specific to the teaching nursing home and its affiliated assisted living facilities, was enacted by the 2002 Legislature and will expire on July 1, 2005. The Miami Jewish Home and Hospital for the Aged currently maintains a \$750,000 letter of credit and \$250,000 in an escrow account for a total of \$1 million.

Availability and Affordability of Long-Term Care Liability Insurance

The 2001 Florida Legislature¹ enacted legislation requiring nursing homes to maintain general and professional liability insurance. The legislation also addressed quality of care, tort reform, and insurance coverage in the nursing home industry. The law required an increase in staffing in nursing homes over a three-year period, strengthened regulatory enforcement and quality oversight, established risk management and adverse incident reporting in nursing homes, required Medicaid reimbursement rebasing and full funding of direct patient care, provided significant tort reform, required nursing homes to maintain liability insurance coverage at all times, and required the Agency for Health Care Administration (AHCA) to seek a Federal Medicaid waiver to use Medicaid funds to create and operate a long-term care risk-retention group for self-insurance purposes. The Legislature appropriated more than \$70 million in new funding to implement the provisions of this legislation.

¹ Ch. 2001-45, L.O.F.

In February 2002, the Speaker of the House of Representatives appointed the House Select Committee on Liability Insurance for Long-Term Care Facilities, in response to concerns of representatives of the long-term care industry regarding the high costs and unavailability of the required liability insurance coverage. The select committee concluded that there was no consensus among the various organizations and interest groups participating in the debate over the existence or nature of a specific insurance crisis in the nursing home industry.

However, that same year, in December 2002, the Speaker of the House of Representatives and the President of the Senate appointed a Joint Select Committee on Nursing Homes to address the continuing crisis facing Florida's nursing homes in both obtaining and maintaining adequate insurance coverage. The committee made a number of recommendations which were not adopted by the 2003 Legislature. In November 2003, the Speaker of the House of Representatives and the President of the Senate re-appointed the Joint Select Committee on Nursing Homes. The Speaker and the President asked the committee to reconsider issues regarding the continuing liability insurance difficulties facing Florida's nursing homes and to assess the impact of the reforms contained in CS/CS/CS/SB 1202 (ch. 2001-45, L.O.F.). After hearing extensive testimony on the availability, affordability, and coverage of liability insurance for long-term care providers, the joint select committee drew the following conclusions regarding liability insurance:

- *At the Committee's request, the Office of Insurance Regulation reevaluated the liability insurance market and reported that there has been no appreciable change in the availability of private liability insurance over the past year.*
- *General and professional liability insurance, with actual transfer-of-risk, is virtually unavailable in Florida. "Bare-bones" policies designed to provide minimal compliance with the statutory insurance requirement, are available, however, the cost often exceeds the face value of the coverage offered in the policy.*
- *There is growing concern that the combination of minimal compliance liability policies and changes in nursing home corporate structures designed to limit liability have the potential of producing a situation in which an injured resident may have no hope of recovery of a legitimate claim.*
- *Continuing Care Retirement Communities are in a unique situation. These facilities, on the whole, seem to have better quality of care; however, residents, as private purchasers of care, are forced to absorb increases in operating costs due to escalating insurance costs.*

Thus, the joint select committee concluded that the long-term care liability insurance market had not improved.

Staff contacted representatives with both the Office of Insurance Regulation (OIR) and the Agency for Health Care Administration (AHCA) who stated that the conclusions (noted above) of the Joint Select Committee regarding general and professional liability insurance are still accurate. There has not been a change in the availability of private liability insurance over the last year and a half and that such insurance is often provided by surplus lines carriers that do not have to file their rates and forms with the OIR.

III. Effect of Proposed Changes:

Section 1. This bill amends s. 400.141(20), F.S., to delete an expiration date for the exception to the requirement for nursing home facilities to maintain general and professional liability insurance that the law provides for the state-designated teaching nursing home. The current exception, which expires July 1, 2005, authorizes the teaching nursing home and its affiliated assisted living facilities, in lieu of maintaining general and professional liability insurance coverage, to show proof of financial responsibility by establishing an escrow account in a minimum amount of \$750,000 or the issuance of an unexpired, irrevocable, nontransferable and nonassignable letter of credit. The proposed revision would make permanent the exception to the general and professional liability insurance coverage requirement for a state-designated teaching nursing home and its affiliated assisted living facilities.

The teaching nursing home and its affiliated assisted living facilities would continue to be required to show proof of financial responsibility by establishing an escrow account in a minimum amount of \$750,000 or maintaining an unexpired, irrevocable, nontransferable and nonassignable letter of credit.

Section 2. This bill would take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Miami Jewish Home and Hospital for the Aged would be able to demonstrate proof of financial responsibility in lieu of maintaining general and professional liability insurance.

C. Government Sector Impact:

The bill does not have a fiscal impact on the Agency for Health Care Administration.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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.
